

# Chapter 1000 Matters Decided by Various U.S. Patent and Trademark Office Officials

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| <b>1002.02(h)</b>    | [Reserved]   | (a)                  | IN GENERAL.— The United States Patent and Trademark Office, subject to the policy direction of the Secretary of Commerce— |
| <b>1002.02(i)</b>    | Petitions Decided by the Commissioner for Trademarks   | (1)                  | shall be responsible for the granting and issuing of patents and the registration of trademarks; and                      |
| <b>1002.02(j)</b>    | Petitions Decided by the Patent Trial and Appeal Board   | (2)                  | shall be responsible for disseminating to the public information with respect to patents and trademarks.                  |
| <b>1002.02(k)</b>    | Matters Decided by the General Counsel, the Office of General Law and the Solicitor  | (b)                  | SPECIFIC POWERS.— The Office—   |
| <b>1002.02(k)(1)</b> | Petitions and Matters Decided by the General Counsel   | (1)                  | shall adopt and use a seal of the Office, which shall be judicially noticed and with which letters patent, certificates   |

of trademark registrations, and papers issued by the Office shall be authenticated;

(2) may establish regulations, not inconsistent with law, which—

(A) shall govern the conduct of proceedings in the Office;

(B) shall be made in accordance with section 553 of title 5;

(C) shall facilitate and expedite the processing of patent applications, particularly those which can be filed, stored, processed, searched, and retrieved electronically, subject to the provisions of section 122 relating to the confidential status of applications;

(D) may govern the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office;

(E) shall recognize the public interest in continuing to safeguard broad access to the United States patent system through the reduced fee structure for small entities under section 41(h)(1);

(F) provide for the development of a performance-based process that includes quantitative and qualitative measures and standards for evaluating cost-effectiveness and is consistent with the principles of impartiality and competitiveness; and

(G) may, subject to any conditions prescribed by the Director and at the request of the patent applicant, provide for prioritization of examination of applications for products, processes, or technologies that are important to the national economy or national competitiveness without recovering the aggregate extra cost of providing such prioritization, notwithstanding section 41 or any other provision of law;

(3) may acquire, construct, purchase, lease, hold, manage, operate, improve, alter, and renovate any real, personal, or mixed property, or any interest therein, as it considers necessary to carry out its functions;

(4)

(A) may make such purchases, contracts for the construction, maintenance, or management and operation of facilities, and contracts for supplies or services, without regard to the provisions of subtitle I and chapter 33 of title 40, division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, and the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.); and

(B) may enter into and perform such purchases and contracts for printing services, including the process of composition, platemaking, presswork, silk screen processes, binding, microform, and the products of such processes, as it considers necessary to carry out the functions of the Office,

without regard to sections 501 through 517 and 1101 through 1123 of title 44;

(5) may use, with their consent, services, equipment, personnel, and facilities of other departments, agencies, and instrumentalities of the Federal Government, on a reimbursable basis, and cooperate with such other departments, agencies, and instrumentalities in the establishment and use of services, equipment, and facilities of the Office;

(6) may, when the Director determines that it is practicable, efficient, and cost-effective to do so, use, with the consent of the United States and the agency, instrumentality, Patent and Trademark Office, or international organization concerned, the services, records, facilities, or personnel of any State or local government agency or instrumentality or foreign patent and trademark office or international organization to perform functions on its behalf;

(7) may retain and use all of its revenues and receipts, including revenues from the sale, lease, or disposal of any real, personal, or mixed property, or any interest therein, of the Office;

(8) shall advise the President, through the Secretary of Commerce, on national and certain international intellectual property policy issues;

(9) shall advise Federal departments and agencies on matters of intellectual property policy in the United States and intellectual property protection in other countries;

(10) shall provide guidance, as appropriate, with respect to proposals by agencies to assist foreign governments and international intergovernmental organizations on matters of intellectual property protection;

(11) may conduct programs, studies, or exchanges of items or services regarding domestic and international intellectual property law and the effectiveness of intellectual property protection domestically and throughout the world, and the Office is authorized to expend funds to cover the subsistence expenses and travel-related expenses, including per diem, lodging costs, and transportation costs, of persons attending such programs who are not Federal employees;

(12)

(A) shall advise the Secretary of Commerce on programs and studies relating to intellectual property policy that are conducted, or authorized to be conducted, cooperatively with foreign intellectual property offices and international intergovernmental organizations; and

(B) may conduct programs and studies described in subparagraph (A); and

(13)

(A) in coordination with the Department of State, may conduct programs and studies cooperatively with foreign intellectual property offices and international intergovernmental organizations; and

(B) with the concurrence of the Secretary of State, may authorize the transfer of not to exceed \$100,000 in any year to the Department of State for the purpose of making special payments to international intergovernmental organizations for

studies and programs for advancing international cooperation concerning patents, trademarks, and other matters.

(c) CLARIFICATION OF SPECIFIC POWERS.—

(1) The special payments under subsection (b)(13)(B) shall be in addition to any other payments or contributions to international organizations described in subsection (b)(13)(B) and shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the United States Government.

(2) Nothing in subsection (b) shall derogate from the duties of the Secretary of State or from the duties of the United States Trade Representative as set forth in section 141 of the Trade Act of 1974 (19 U.S.C. 2171).

(3) Nothing in subsection (b) shall derogate from the duties and functions of the Register of Copyrights or otherwise alter current authorities relating to copyright matters.

(4) In exercising the Director's powers under paragraphs (3) and (4)(A) of subsection (b), the Director shall consult with the Administrator of General Services.

(5) In exercising the Director's powers and duties under this section, the Director shall consult with the Register of Copyrights on all copyright and related matters.

(d) CONSTRUCTION.— Nothing in this section shall be construed to nullify, void, cancel, or interrupt any pending request-for-proposal let or contract issued by the General Services Administration for the specific purpose of relocating or leasing space to the United States Patent and Trademark Office.

**35 U.S.C. 3 Officers and employees.**

(a) UNDER SECRETARY AND DIRECTOR.—

(1) IN GENERAL.— The powers and duties of the United States Patent and Trademark Office shall be vested in an Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (in this title referred to as the "Director"), who shall be a citizen of the United States and who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be a person who has a professional background and experience in patent or trademark law.

(2) DUTIES.—

(A) IN GENERAL.— The Director shall be responsible for providing policy direction and management supervision for the Office and for the issuance of patents and the registration of trademarks. The Director shall perform these duties in a fair, impartial, and equitable manner.

(B) CONSULTING WITH THE PUBLIC ADVISORY COMMITTEES.— The Director shall consult with the Patent Public Advisory Committee established in section 5 on a regular basis on matters relating to the patent operations of the Office, shall consult with the Trademark Public Advisory Committee established in section 5 on a regular basis on matters relating to the trademark operations of the Office, and shall consult with the respective Public Advisory Committee before submitting budgetary proposals to the Office of Management and Budget or changing or proposing to change patent or trademark user fees or patent or trademark regulations which

are subject to the requirement to provide notice and opportunity for public comment under section 553 of title 5, as the case may be.

(3) OATH.— The Director shall, before taking office, take an oath to discharge faithfully the duties of the Office.

(4) REMOVAL.— The Director may be removed from office by the President. The President shall provide notification of any such removal to both Houses of Congress.

(b) OFFICERS AND EMPLOYEES OF THE OFFICE.—

(1) DEPUTY UNDER SECRETARY AND DEPUTY DIRECTOR.— The Secretary of Commerce, upon nomination by the Director, shall appoint a Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office who shall be vested with the authority to act in the capacity of the Director in the event of the absence or incapacity of the Director. The Deputy Director shall be a citizen of the United States who has a professional background and experience in patent or trademark law.

(2) COMMISSIONERS.—

(A) APPOINTMENT AND DUTIES.— The Secretary of Commerce shall appoint a Commissioner for Patents and a Commissioner for Trademarks, without regard to chapter 33, 51, or 53 of title 5. The Commissioner for Patents shall be a citizen of the United States with demonstrated management ability and professional background and experience in patent law and serve for a term of 5 years. The Commissioner for Trademarks shall be a citizen of the United States with demonstrated management ability and professional background and experience in trademark law and serve for a term of 5 years. The Commissioner for Patents and the Commissioner for Trademarks shall serve as the chief operating officers for the operations of the Office relating to patents and trademarks, respectively, and shall be responsible for the management and direction of all aspects of the activities of the Office that affect the administration of patent and trademark operations, respectively. The Secretary may reappoint a Commissioner to subsequent terms of 5 years as long as the performance of the Commissioner as set forth in the performance agreement in subparagraph (B) is satisfactory.

(B) SALARY AND PERFORMANCE AGREEMENT.— The Commissioners shall be paid an annual rate of basic pay not to exceed the maximum rate of basic pay for the Senior Executive Service established under section 5382 of title 5, including any applicable locality-based comparability payment that may be authorized under section 5304(h)(2)(C) of title 5. The compensation of the Commissioners shall be considered, for purposes of section 207(c)(2)(A) of title 18, to be the equivalent of that described under clause (ii) of section 207(c)(2)(A) of title 18. In addition, the Commissioners may receive a bonus in an amount of up to, but not in excess of, 50 percent of the Commissioners' annual rate of basic pay, based upon an evaluation by the Secretary of Commerce, acting through the Director, of the Commissioners' performance as defined in an annual performance agreement between the Commissioners and the Secretary. The annual performance agreements shall incorporate measurable organization and individual goals in key operational areas as delineated in an

annual performance plan agreed to by the Commissioners and the Secretary. Payment of a bonus under this subparagraph may be made to the Commissioners only to the extent that such payment does not cause the Commissioners' total aggregate compensation in a calendar year to equal or exceed the amount of the salary of the Vice President under section 104 of title 3.

(C) REMOVAL.— The Commissioners may be removed from office by the Secretary for misconduct or nonsatisfactory performance under the performance agreement described in subparagraph (B), without regard to the provisions of title 5. The Secretary shall provide notification of any such removal to both Houses of Congress.

(3) OTHER OFFICERS AND EMPLOYEES.— The Director shall—

(A) appoint such officers, employees (including attorneys), and agents of the Office as the Director considers necessary to carry out the functions of the Office; and

(B) define the title, authority, and duties of such officers and employees and delegate to them such of the powers vested in the Office as the Director may determine.

The Office shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the Office shall be taken into account for purposes of applying any such limitation

(4) TRAINING OF EXAMINERS.— The Office shall submit to the Congress a proposal to provide an incentive program to retain as employees patent and trademark examiners of the primary examiner grade or higher who are eligible for retirement, for the sole purpose of training patent and trademark examiners.

(5) NATIONAL SECURITY POSITIONS.— The Director, in consultation with the Director of the Office of Personnel Management, shall maintain a program for identifying national security positions and providing for appropriate security clearances, in order to maintain the secrecy of certain inventions, as described in section 181, and to prevent disclosure of sensitive and strategic information in the interest of national security.

(6) ADMINISTRATIVE PATENT JUDGES AND ADMINISTRATIVE TRADEMARK JUDGES.—The Director may fix the rate of basic pay for the administrative patent judges appointed pursuant to section 6 and the administrative trademark judges appointed pursuant to section 17 of the Trademark Act of 1946 (15 U.S.C. 1067) at not greater than the rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5. The payment of a rate of basic pay under this paragraph shall not be subject to the pay limitation under section 5306(e) or 5373 of title 5.

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## 1001.01 Modes of Exercising Authority [R-07.2015]

The authority of the Director of the USPTO to review and supervise the work of the Office is exercised by the promulgation of the Rules of

Practice; issuance of orders, notices and memoranda stating Office policies and modes for effectuating these policies; decisions on petitions by applicants; and by the designation of particular cases which must be submitted to the Director of the USPTO or other officials authorized by the Director of the USPTO. The present Chapter deals with the latter two items. The line of demarcation between appealable matters for the Patent Trial and Appeal Board (Board) and petitionable matters for the Director of the U.S. Patent and Trademark Office (Director) should be carefully observed. The Board will not ordinarily hear a question that should be decided by the Director on petition, and the Director will not ordinarily entertain a petition where the question presented is a matter appealable to the Board. See [MPEP Chapter 1200](#) for more information on appealable matters.

[37 CFR 1.181\(g\)](#) states, “The Director may delegate to appropriate Patent and Trademark Office officials the determination of petitions.”

The various delegations to various Office officials are set forth in this Chapter.

The delegations set forth in this Chapter do not confer a right to have a matter decided by a specific Office official, rather, such delegations aid in the efficient treatment of petitions by the Office. A delegation of supervisory or higher level review authority over a matter carries with it the authority to decide the matter *ab initio*.

## 1002 Petitions to the Director of the USPTO [R-07.2022]

### *37 CFR 1.4 Nature of correspondence and signature requirements.*

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(c) Since different matters may be considered by different branches or sections of the Office, each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects. Subjects provided for on a single Office or World Intellectual Property Organization form may be contained in a single paper.

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### *37 CFR 1.181 Petition to the Director.*

(a) Petition may be taken to the Director:

(1) From any action or requirement of any examiner in the *ex parte* prosecution of an application, or in *ex parte* or

*inter partes* prosecution of a reexamination proceeding which is not subject to appeal to the Patent Trial and Appeal Board or to the court;

(2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Director; and

(3) To invoke the supervisory authority of the Director in appropriate circumstances. For petitions involving action of the Patent Trial and Appeal Board, see § 41.3 of this title.

(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support thereof should accompany or be embodied in the petition; and where facts are to be proven, the proof in the form of affidavits or declarations (and exhibits, if any) must accompany the petition.

(c) When a petition is taken from an action or requirement of an examiner in the *ex parte* prosecution of an application, or in the *ex parte* or *inter partes* prosecution of a reexamination proceeding, it may be required that there have been a proper request for reconsideration (§ 1.111) and a repeated action by the examiner. The examiner may be directed by the Director to furnish a written statement, within a specified time, setting forth the reasons for his or her decision upon the matters averred in the petition, supplying a copy to the petitioner.

(d) Where a fee is required for a petition to the Director the appropriate section of this part will so indicate. If any required fee does not accompany the petition, the petition will be dismissed.

(e) Oral hearing will not be granted except when considered necessary by the Director.

(f) The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

(g) The Director may delegate to appropriate Patent and Trademark Office officials the determination of petitions.

**37 CFR 1.182 Questions not specifically provided for.**

All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Director, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(f).

**37 CFR 1.183 Suspension of rules.**

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(f).

Petitions on appealable matters ordinarily are not entertained. See [MPEP § 1201](#).

A petition should include:

1. A statement of the type of relief requested and the authorizing provision of statute or rules, if applicable;
2. A statement of the relevant facts;
3. An identification of the points that are to be reviewed; and
4. The fee, where required.

[37 CFR 1.4\(c\)](#) requires a separate petition for each distinct subject, inquiry or order to avoid confusion and delay in answering the petition. Therefore, each petition should ordinarily only be filed under a single authorizing provision (e.g., [37 CFR 1.181](#)). Although concurrent petitions seeking relief from the same action may be filed, many prior petitioners have benefitted by delaying the filing of petitions under [37 CFR 1.182](#) or [1.183](#) until after they receive a decision on a petition seeking supervisory review under [37 CFR 1.181](#).

The mere filing of a petition will not stay the period for replying to an examiner's action which may be running against an application, nor act as a stay of other proceedings ([37 CFR 1.181\(f\)](#)). For example, if a petition to vacate a final rejection as premature is filed within 2 months from the date of the final rejection, the period for reply to the final rejection is not extended even if the petition is not reached for decision within that period. However, if the petition is granted and the applicant has filed an otherwise full reply to the rejection *within the period for reply*, the case is not abandoned.

[37 CFR 1.181\(f\)](#) provides that any petition under that rule which is not filed "within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely." Often, the "action or notice from which relief is requested," for example, a requirement for a new drawing, is included in the same letter as an action on the merits of the claims, the latter having a 3-month period for reply. Under such circumstances, if applicant requests reconsideration, under [37 CFR 1.111\(b\)](#), of the requirement for a new drawing, the

examiner's action on this request, if adverse, establishes the beginning of the 2-month period for filing the petition. The petition must be filed within this period even though the period for reply to the rejection of the claims may extend beyond the 2-month period. The 2-month period for filing timely petitions set forth in [37 CFR 1.181\(f\)](#) applies to any petition under [37 CFR part 1](#), except as otherwise provided. A number of sections (e.g., [37 CFR 1.377](#), [1.378](#), and [1.740](#)) specify the time period within which a petition must be filed (or may be dismissed as untimely). The 2-month time period in [37 CFR 1.181\(f\)](#) applies to a petition under any section (e.g., [37 CFR 1.182](#) and [37 CFR 1.183](#)) that does not specify the time period within which a petition must be filed. The 2-month period is not extendible under [37 CFR 1.136\(a\)](#) since the time is within the discretion of the Director of the USPTO.

[37 CFR 1.181\(f\)](#) authorizes deciding officials to reasonably exercise discretion to accept a petition filed more than 2 months after the date of the action or notice from which relief is requested. A deciding official should not accept a petition after the 2-month period without a reason because the 2-month period provides for minimal undue delay in patent prosecution ("The Office has long considered the two-month period in [§ 1.181\(f\)](#) to be the benchmark for determining the timeliness of petitions." *Changes to Implement the Patent Business Goals*, 65 FR 54603, 54646 (September 8, 2000) (citing *Changes to Patent Practice and Procedure*, 62 FR 53132, 53161 (October 10, 1997))). The deciding official may exercise their discretion to accept an untimely petition beyond the 2-month period in the circumstance that doing so would avoid unnecessary delays in the prosecution of the application. When a petition subject to [37 CFR 1.181\(f\)](#) is filed after the 2-month period from the mailing date of the action or notice from which relief is requested and is accepted at the discretion of the deciding official, the reason for accepting the untimely petition should be articulated in the decision to ensure clarity of the record. The following non-exhaustive factors may be considered to determine whether to accept a petition after the 2-month period:

(1) Petitioner engaged in significant, constructive efforts with the examiner to resolve the issue outside of the petitions process

(2) The examiner agreed, on the written record, to perform an action that would resolve the issue, but failed to do so

(3) A showing of extenuating circumstances, such as delay caused by health, pandemic, natural disaster, etc.

If the deciding official determines that the petition will be dismissed as untimely, the decision should include an explanation of how the 2-month period was calculated. The decision should inform petitioner that arguments on the issue of timeliness may be presented in a renewed petition.

The mere filing of a petition will not stay the period for replying to an examiner's action which may be running against an application, nor act as a stay of other proceedings ([37 CFR 1.181\(f\)](#)).

Form paragraph 10.20 may be used where an insufficient fee was filed with a petition or a request.

#### ¶ 10.20 Petition or Request Dismissed, Proper Fee Not Submitted

Applicant's petition or request under 37 CFR [1] filed [2] is DISMISSED because the proper petition or processing fee of [3] required under [37 CFR 1.17](#) has not been submitted.

#### Examiner Note:

1. Requests under [37 CFR 1.48](#) for correcting inventorship require a fee as set forth in [37 CFR 1.17\(i\)](#).
2. Petitions to suspend action under [37 CFR 1.103\(a\)](#) require a fee as set forth in [37 CFR 1.17\(g\)](#).
3. Petitions to withdraw an application from issue under [37 CFR 1.313](#) require a fee as set forth in [37 CFR 1.17\(h\)](#).
4. Petitions for an extension of time under [37 CFR 1.136\(a\)](#) require varying fees. See [37 CFR 1.17\(a\)\(1\)-\(5\)](#).
5. Requests to suspend action under [37 CFR 1.103\(b\)](#) or [\(c\)](#) require a fee set forth in [37 CFR 1.17\(i\)](#).
6. Requests to defer examination under [37 CFR 1.103\(d\)](#) require a fee set forth in [37 CFR 1.17\(i\)](#) and publication fee set forth in [37 CFR 1.18\(d\)](#).

Form paragraph 10.30 may be used to generate the header information for a petition decision.

#### ¶ 10.30 Petition Header Information

In re Application of: [1] : Appl. No.: [2] : DECISION ON PETITION Filed: [3] : [5] For: [4] :

### 1002.01 Procedure [R-07.2015]

Petitions, together with the respective application files, are sent to the official having the delegated authority to decide the petition. The petition may be referred to the examiner for a formal statement under [37 CFR 1.181\(c\)](#) or for an informal memorandum. See [MPEP § 711.03\(d\)](#).

Where a formal statement under [37 CFR 1.181\(c\)](#) is made, a copy thereof is mailed to the petitioner by the examiner unless the examiner is otherwise directed, and the application file and petition, accompanied by the original copy of his or her statement, are returned to the official handling the petition. If an informal memorandum is requested, no copy thereof is mailed to the petitioner by the examiner.

### 1002.02 Delegation of Authority To Decide Petitions [R-07.2022]

Petitions to the Director of the USPTO are decided in accordance with the following delegation of authority.

In any case in which the authority to decide the petition has been delegated as indicated in [MPEP §§ 1002.02\(b\)](#), [1002.02\(f\)](#), [1002.02\(g\)](#), [1002.02\(j\)](#), [1002.02\(o\)](#), and [1002.02\(p\)](#), a denial of a petition is a final agency decision. A dismissal of a petition, a denial of a petition without prejudice, and other interlocutory orders are not final agency decisions.

Petitions decided by the Technology Center Directors are set forth in [MPEP § 1002.02\(c\) et seq.](#) A petition decided under the delegated authority set forth in [MPEP § 1002.02\(c\)](#) should not use language that suggests that it is a final agency decision. Therefore, a petition decided by a Technology Center Director in which the requested relief is not granted should be dismissed rather than denied. Additionally, the decision should indicate that it is not a final agency decision. To promote consistency and enhance clarity of petition decisions by Technology Center Directors, the following language may be used when a petition decided by a Technology Center Director is dismissed:

“The petition filed [date X] is dismissed. This is not a final agency decision. See [MPEP § 1002.02](#). Any request for reconsideration or higher level review of this decision not filed within two months of the mailing date of this decision may be dismissed as untimely. This two-month period is not extendable. See [37 CFR 1.181\(f\)](#).”

In accordance with [37 CFR 1.181\(g\)](#), the authority to decide petitions to the Director of the USPTO not otherwise delegated, has been delegated to various Office officials. Generally, these officials will decide petitions as specified in the following sections for the effective operation of the Office. Also listed are certain petitions which are not, strictly speaking, to the Director of the USPTO but have been committed by statute or rule to the designated officials.

The delegation of specific petitions and/or matters to the Technology Center (TC) Directors is identified in the sections below. Unless specifically provided for in the letter of delegation of authority, further delegations are not permitted. Any petitions and/or matters so delegated by the TC Directors may be decided by the TC Directors.

Authority not herein delegated has been reserved to the Director of the USPTO and may be delegated to appropriate officials on an *ad hoc* basis.

#### 1002.02(a) [Reserved]

#### 1002.02(b) Petitions and Requests Decided by the Deputy Commissioner Who Oversees the Office of Petitions or Assigned Staff in the Office of Petitions, the Office of Patent Legal Administration and the MPEP Staff Office [R-01.2024]

In general, petitions under this section should be directed to “Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450,” except as otherwise provided. For example, applications for patent term extension under [35 U.S.C. 156](#) should be directed to Mail Stop Hatch-Waxman PTE and petitions for retroactive foreign filing license under [37 CFR 5.25](#) should be directed to Mail Stop L&R.

1. Petitions to revive an abandoned national, nonprovisional or provisional patent application on the basis of unintentional delay, [37 CFR 1.137](#) and [MPEP § 711.03\(c\)](#).
2. Petitions under [37 CFR 1.183](#) for waiver or suspension of rules not otherwise provided for.
3. Petitions to invoke the supervisory authority of the Director of the USPTO under [37 CFR 1.181](#) in matters not otherwise provided for.
4. Petitions for an unintentionally delayed foreign priority claim, [37 CFR 1.55\(e\)](#) and [MPEP § 214.02](#).
5. Petitions to restore the right of foreign priority, [37 CFR 1.55\(c\)](#) and [MPEP § 213.03](#), subsection III.
6. Petitions for late filing of certified copy of foreign application, [37 CFR 1.55\(f\)](#) or [\(g\)](#), as applicable, and [MPEP § 215.02](#).
7. Petitions for an unintentionally delayed domestic benefit claim, [37 CFR 1.78\(c\) and \(e\)](#) and [MPEP § 211.04](#).
8. Petitions to restore the benefit of a provisional application, [37 CFR 1.78\(b\)](#) and [MPEP § 211.01\(a\)](#), subsection II.
9. Petitions to defer issuance of patents, [37 CFR 1.314](#) and [MPEP § 1306.01](#).
10. Petitions for express abandonment of patent applications after payment of the issue fee, [37 CFR 1.313\(c\)\(3\)](#), [MPEP § 711.01](#), subsection I, and [MPEP § 1308](#).
11. Petitions relating to issuance of patents not otherwise provided for, for example, issuance of a patent in the name of an assignee under [37 CFR 3.81](#).
12. Petitions for the withdrawal of attorney or agent of record under [37 CFR 1.36](#) in patent applications involved in proceedings before Deputy Commissioner for Patents who oversees the Office of Petitions or assigned staff in the Office of Petitions, the Office of Patent Legal Administration, or the MPEP staff office and in applications pending in a Technology Center.
13. Petitions under [37 CFR 1.182](#) in matters not otherwise provided for in the regulations.
14. Requests from the examiner for the rehearing of a decision of the Patent Trial and Appeal Board, [MPEP § 1214.04](#).
15. Petitions to review refusal to accept and record maintenance fee payment filed prior to the expiration of a patent, [37 CFR 1.377](#) and [MPEP § 2580](#).
16. Petitions to accept an unintentionally delayed payment of maintenance fee in an expired patent, [37 CFR 1.378](#) and [MPEP § 2590](#).
17. Petitions to review a decision of Technology Center Director or Central Reexamination Unit Director, [37 CFR 1.181](#).
18. Petitions to withdraw a holding of abandonment not otherwise delegated, [37 CFR 1.181](#).
19. Requests to order a Director initiated reexamination proceeding, [37 CFR 1.520](#).
20. Petitions to accept late papers in a reexamination proceeding based upon unintentional delay, [35 U.S.C. 41\(a\)\(7\)](#).
21. Petitions for access to patent applications under [37 CFR 1.14](#) (or [pre-AIA 37 CFR 1.14](#)) with the exception of applications involved in or related to a proceeding before the Patent Trial and Appeal Board, [MPEP §§ 103, 104](#), and [1901.05](#).
22. Petitions relating to reexamination proceedings and/or reissue proceedings under [37 CFR 1.182](#) and [1.183](#).
23. Petitions relating to merger of reexamination and reissue proceedings.
24. Applications relating to Hatch-Waxman patent term extension, [37 CFR 1.710 - 1.791](#) and petitions relating to Hatch-Waxman patent term extension, [37 CFR 1.182](#) or [1.183](#).



25. Petitions under [37 CFR 1.181](#) to review a determination of the length of the patent term extension under [37 CFR 1.701](#) for original applications, other than designs, filed on or after June 8, 1995 and before May 29, 2000, [MPEP § 2720](#).
26. Requests for reconsideration of the patent term adjustment indicated in the notice of allowance or in the patent, under [37 CFR 1.705](#), [MPEP § 2734](#), subsection I.
27. Requests for reinstatement of the period of patent term adjustment reduced pursuant to [37 CFR 1.704\(b\)](#) under [37 CFR 1.705\(c\)](#), [MPEP § 2734](#), subsection II.
28. Petitions relating to the filing date of patent applications under [37 CFR 1.53](#), [MPEP § 506.02](#).
29. Petitions to convert a nonprovisional application filed under [37 CFR 1.53\(b\)](#) to a provisional application under [37 CFR 1.53\(c\)](#) where the nonprovisional application is before the Office of Petitions or the Office of Patent Legal Administration.
30. Requests to convert a provisional application filed under [37 CFR 1.53\(c\)](#) to a nonprovisional application under [37 CFR 1.53\(b\)](#) where the provisional application is before the Office of Petitions or the Office of Patent Legal Administration.
31. Petitions for extensions of time under [37 CFR 1.136\(b\)](#) in applications before the Office of Petitions or the Office of Patent Legal Administration ([MPEP § 710.02\(e\)](#)).
32. Petitions, or requests at the initiative of the USPTO by someone other than a Technology Center Director, to withdraw patent applications from issue under [37 CFR 1.313\(a\)](#) before payment of the issue fee.
33. Petitions, or requests at the initiative of the USPTO by someone other than a Technology Center Director, to withdraw patent applications from issue after payment of the issue fee under [37 CFR 1.313\(b\)](#), [MPEP § 1308](#), subsection II.
34. Petitions to withdraw patent applications from issue after payment of the issue fee under [37 CFR 1.313\(c\)](#), [MPEP § 1308](#), subsection I.B.
35. Petitions to expunge papers or assignment information from patent applications under [37 CFR 1.59](#) which were not submitted under [MPEP § 724.02](#) or as part of an information disclosure statement (IDS).
36. Petitions to expunge recorded assignment information, [37 CFR 1.182](#) and [MPEP § 323.01\(d\)](#).
37. Petitions to Make Special based on inventor's health, [37 CFR 1.102\(c\)\(1\)](#) and [MPEP § 708.02](#), subsection I.
38. Petitions to Make Special based on inventor's age, [37 CFR 1.102\(c\)\(1\)](#) and [MPEP § 708.02](#), subsection II.
39. Requests for prioritized examination under [37 CFR 1.102\(e\)](#), [MPEP § 708.02\(b\)](#).
40. Requests for participation in a Patent Prosecution Highway program ([www.uspto.gov/PPH](http://www.uspto.gov/PPH)).
41. Requests for participation in the Law School Pilot Program.
42. Petitions for retroactive foreign filing license under [37 CFR 5.25](#), [MPEP § 140](#), subsection II.
43. Petitions to show proprietary interest sufficient to make application on behalf of and as agent for the inventor under [37 CFR 1.46](#) (applicable in applications filed on or after September 16, 2012), [MPEP § 409.05](#), subsection II.
44. Petitions to accept an oath or declaration without a joint inventor's signature, [pre-AIA 37 CFR 1.47\(a\)](#) (applicable in applications filed before September 16, 2012), [MPEP § 409.03\(a\)](#).
45. Petitions to accept an oath or declaration from a person to whom an inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter justifying such action, [pre-AIA 37 CFR 1.47\(b\)](#)

(applicable in applications filed before September 16, 2012 where none of the inventors are available to sign), [MPEP § 409.03\(b\)](#).

46. Requests for Corrected Patent Application Publication under [37 CFR 1.221\(b\)](#), [MPEP § 1130](#), subsection II.

47. Petitions to change entity status, including the payment of additional fees, [37 CFR 1.28](#) and [1.29](#).

48. Return of papers containing discourteous remarks. See [MPEP §§ 714.19](#) and [714.25](#).

49. Petitions to issue a corrected patent, [37 CFR 1.322\(b\)](#).

50. Requests for a certificate of correction that affects related U.S. application data or foreign priority data.

### **1002.02(c) Petitions and Requests Decided by the Technology Center Directors [R-01.2024]**

1. Petitions or requests to reopen prosecution of patent applications or to reinstate a rejection after decision by the Patent Trial and Appeal Board under [37 CFR 1.198](#), where no court action has been filed, [MPEP §§ 1214.04](#) and [1214.07](#).

2. Petitions under [37 CFR 1.144](#) after requirement for restriction by an examiner in a patent application ([MPEP § 818.01\(c\)](#)), including a final requirement finding that a national stage application lacks unity of invention ([37 CFR 1.499](#) and [MPEP § 1893.03\(d\)](#)); and protests following a holding of lack of unity of invention by the USPTO in its capacity as International Searching Authority ([37 CFR 1.477](#) and [MPEP § 1850](#)) or International Preliminary Examining Authority ([37 CFR 1.489](#) and [MPEP § 1875.02](#)).

3. Petitions invoking the supervisory authority of the Director of the USPTO under [37 CFR 1.181](#) involving any *ex parte* action or requirement in a patent application by the examiner which is not subject to appeal ([37 CFR 1.191](#)) and not otherwise provided for, as for example:

a. prematureness of final rejection, [MPEP § 706.07\(c\)](#);

b. requirement to cancel “new matter” from specification, [MPEP § 608.04\(c\)](#);

c. relative to formal sufficiency and propriety of affidavits under [37 CFR 1.131\(a\)](#) ([MPEP § 715.08](#)) or [37 CFR 1.132](#) ([MPEP § 716](#));

d. refusal to enter an amendment under [37 CFR 1.312](#), [MPEP § 714.16\(d\)](#);

e. refusal to enter an amendment, [MPEP § 714.19](#);

f. refusal to enter an amendment under [37 CFR 1.111](#) or [1.115](#), [MPEP §§ 714.01\(e\)](#) and [714.03\(a\)](#);

g. resetting period for reply when the delivery of mailed correspondence was delayed by the United States Postal Service (USPS) or the USPTO, [MPEP § 710.06](#); and

h. requirement for information under [37 CFR 1.105](#), [MPEP § 704.14\(c\)](#).

4. Petitions under [37 CFR 1.113](#) relating to objections or requirements made by the examiners.

5. Requests for extensions of a set shortened statutory period under [37 CFR 1.136\(b\)](#) in applications pending in the Technology Center, [MPEP § 710.02\(e\)](#).

6. Petitions under [37 CFR 41.40](#) to request review of the primary examiner’s failure to designate a rejection in the examiner’s answer as a new ground of rejection, [MPEP § 1207.03\(b\)](#).

7. Petitions concerning appealed patent applications or *ex parte* reexamination proceedings before transfer of jurisdiction to the Patent Trial and Appeal Board (e.g., extension of time under [37 CFR 1.136\(b\)](#) or [1.550\(c\)](#) for filing an appeal brief), [MPEP § 1205.01](#).

8. Petitions from refusal to issue a certificate of correction for a patent not involved in an interference, [37 CFR 1.181](#), [MPEP §§ 1480 - 1485](#).

9. Petitions to reinstate appeals dismissed in the Technology Center. See [MPEP § 1205.01](#).

10. Petitions from the denial of a request for reexamination, [37 CFR 1.515\(c\)](#), [MPEP § 2248](#).
11. Requests for extension of time in *ex parte* reexamination proceedings, [37 CFR 1.550\(c\)](#).
12. Petitions under [37 CFR 1.129\(b\)\(2\)](#) traversing a restriction requirement made in an application which is subject to the transitional restriction provisions, [MPEP § 803.03](#).
13. Petitions to convert a nonprovisional application filed under [37 CFR 1.53\(b\)](#) to a provisional application under [37 CFR 1.53\(c\)](#) where the nonprovisional application is before the Technology Center.
14. Requests for interviews with examiner after a patent application has been sent to issue (Notice of Allowability mailed), [MPEP § 713.10](#), or after transfer of jurisdiction to the Patent Trial and Appeal Board, [MPEP § 1204.03](#).
15. Petitions to expunge papers from patent applications under [37 CFR 1.59](#) which were submitted under [MPEP § 724.02](#) or as part of an information disclosure statement.
16. Petitions, or requests at the initiative of the USPTO, to withdraw patent applications from issue before payment of the issue fee, [37 CFR 1.313\(a\)](#), where the application is before the Technology Center.
17. Requests at the initiative of the USPTO to withdraw patent applications from issue after payment of the issue fee under [37 CFR 1.313\(b\)](#), [MPEP § 1308](#), subsection II.
18. Petitions under [37 CFR 1.91](#) to admit a model or exhibit as part of the record of an application, [MPEP § 608.03](#).
19. Requests for the return of models, exhibits, or specimen under [37 CFR 1.94](#), [MPEP § 608.03\(a\)](#).
20. Request by applicant for a second or subsequent suspension of action in patent applications under [37 CFR 1.103\(a\)](#), [MPEP § 709](#), regardless of which rule the first or prior request for suspension was based on.
21. Petitions regarding sequence rules, [37 CFR 1.821 - 1.825](#) and [1.831 - 1.835](#).
22. Request for a certificate of statement of availability of deposit, [MPEP § 2410.02](#).

**1002.02(c)(1) Petitions Decided by the Director of the Technology Center Who Oversees Licensing and Review [R-07.2022]**

In addition to the items delegated to all Technology Center Directors under [MPEP § 1002.02\(c\)](#), authority to decide the following is delegated to the Director of the Technology Center who Oversees Licensing and Review:

1. All petitions filed under [35 U.S.C. 267](#) to extend the time for taking action in United States-owned applications wherein the invention is important to the armament or defense of the United States, [MPEP § 710](#).
2. All petitions under [37 CFR 1.103\(f\)](#) to suspend action in United States-owned applications wherein the publication of the invention might be detrimental to the public safety or defense, [MPEP § 709](#), subsection II.
3. Petitions under [37 CFR 5.12\(b\)](#) for foreign license to file patent applications in foreign countries, [MPEP § 140](#).
4. Petitions for rescission of secrecy order, [37 CFR 5.4](#), [MPEP § 120](#).
5. Petitions to permit disclosure of subject matter under a secrecy order, [37 CFR 5.5\(b\)](#), [MPEP § 120](#).
6. Petitions for modification of secrecy order, [37 CFR 5.5\(c\)](#), [MPEP § 120](#).
7. Petitions relating to refusal of request for publication of a Statutory Invention Registration, [37 CFR 1.295](#) as in effect on March 15, 2013.

8. Petitions relating to request for withdrawal of request for publication of a Statutory Invention Registration, [37 CFR 1.296](#) as in effect on March 15, 2013.

9. Petitions relating to DOE property rights statements under 42 U.S.C. 2182, [MPEP § 150](#).

10. Petitions relating to NASA property rights statements under 42 U.S.C. 2457, [MPEP § 150](#).

11. Petitions relating to foreign filing licenses under [35 U.S.C. 184](#), [MPEP § 140](#).

12. Petitions concerning review of security or government interest matters not otherwise provided for.

13. Petitions relating to any application under a secrecy order pursuant to [35 U.S.C. 181](#), including petitions to expunge subject matter from the application to overcome the secrecy order.

#### **1002.02(c)(2) [Reserved]**

#### **1002.02(c)(3) Petitions and Requests Decided by the Director of Technology Center 2900 [R-07.2015]**

In addition to the items delegated to all Technology Center Directors under [MPEP § 1002.02\(c\)](#), authority to decide the following requests filed in design applications is delegated to the Director of Technology Center 2900:

Requests for expedited examination of design applications under [37 CFR 1.155](#), [MPEP § 1504.30](#).

#### **1002.02(c)(4) Petitions Decided in the Central Reexamination Unit [R-01.2024]**

In addition to the items delegated to Technology Center Directors under [MPEP § 1002.02\(c\)](#), authority to decide the following is delegated to the Director of the Central Reexamination Unit (CRU). Where specifically indicated, the authority is further delegated to the CRU Supervisory Patent Reexamination Specialists (SPRS) as noted below:

1. Petitions under [37 CFR 1.181\(a\)\(1\)](#) from any action or requirement of any examiner in *ex parte* and *inter partes* reexamination proceedings including any request for reconsideration of a decision on such a petition. See [MPEP § 1002.02\(c\)](#), item 3, for petitions seeking supervisory review of prior decisions of petitions under [37 CFR 1.181\(a\)\(1\)](#).

2. Petitions under [37 CFR 1.550\(c\)](#) for an extension of time in *ex parte* reexamination proceedings (further delegated to SPRS).

3. Petitions under [37 CFR 1.956](#) for an extension of time in *inter partes* reexamination proceedings (further delegated to SPRS).

4. Petitions under [37 CFR 1.59](#) to expunge papers in reexamination and supplemental examination proceedings (further delegated to SPRS).

Petitions in *ex parte* and *inter partes* reexamination proceedings for actions occurring after jurisdiction has transferred to the Patent Trial and Appeal Board (Board) or for petitions that have been expressly delegated to be decided by the Board are appropriately filed under [37 CFR 41.3](#). See [MPEP §§ 1002.02\(f\)](#) and [1002.02\(j\)](#) for more information on petitions and other matters decided by the Board.

#### **1002.02(d) Petitions and Matters Decided by Supervisory Patent Examiners [R-08.2017]**

1. Entry of amendments under [37 CFR 1.312](#) which embody more than merely the correction of formal matters without changing the scope of any claim, [MPEP §§ 714.16](#) and [714.16\(d\)](#).

2. Approval of reopening prosecution after the filing of an appeal brief in order to incorporate any new ground of rejection, [MPEP § 1207.04](#).

3. Requests for a certificate of correction submitted under [37 CFR 1.322](#) or [1.323](#) unless the error is clearly minor, clerical or typographical, in which case it is handled by the Certificates of Correction Branch.

4. Requests for a certificate of correction to correct a claim even if the request is submitted under [37 CFR 1.322](#), [MPEP § 1480](#).

5. Petitions under [37 CFR 1.324](#) to correct errors in joining inventors in a patent that is not involved in an interference, [MPEP § 1481.02](#).

6. Disapproval of preliminary amendments under [37 CFR 1.115](#) or second (or subsequent) supplemental amendments (3<sup>rd</sup> reply) under [37 CFR 1.111](#), [MPEP §§ 714.01\(e\)](#) and [714.03\(a\)](#).

7. Letters to an applicant suggesting claims for purposes of interference, or the submission of Form PTO-850, where one or more claims of one application would differ from corresponding claims of another application. See [37 CFR 41.202](#) and [MPEP § 2304.04](#) et seq.

8. Amendments presented after decision in an appeal by the Patent Trial and Appeal Board as to which the primary examiner recommends entry as placing the application in condition for allowance. See [MPEP § 1214.07](#).

9. Petitions under [37 CFR 1.84](#) to accept photographs or color drawings in patent applications, [MPEP § 608.02](#), subsection VIII.

10. Withdrawal from appeal of an application remanded by the Patent Trial and Appeal Board. See [MPEP § 1211.01](#).

11. Requests for deferral of examination under [37 CFR 1.103\(d\)](#), [MPEP § 709](#).

#### **1002.02(e) [Reserved]**

#### **1002.02(f) Petitions and Matters Decided by the Chief Administrative Patent Judge of the Patent Trial and Appeal Board [R-07.2015]**

The Chief Administrative Patent Judge is authorized to re-delegate authority to decide any of these petitions or matters to the Deputy Chief Administrative Patent Judge, to a Vice Chief Administrative Patent Judge, a Lead Administrative Patent Judge, or to an Administrative Patent Judge of the Patent Trial and Appeal Board.

1. If raised properly during *ex parte* reexamination and in a subsequent appeal, issues relating to an examiner's determination that a reference raises a substantial new question of patentability. See 75 FR 36357 (June 25, 2010). This authority may be re-delegated to the panel of the Patent Trial and Appeal Board deciding the appeal in the reexamination.

2. Ordering, in the interests-of-justice, an interference commenced before September 16, 2012 to be dismissed without prejudice to the filing of a petition for post-grant review. [37 CFR 42.200\(d\)](#).

3. Designation of members of the Patent Trial and Appeal Board to, on written appeal, review adverse decisions of examiners upon applications for patents, review appeals of *ex parte* reexaminations, conduct derivation proceedings, conduct *inter partes* reviews and post-grant reviews, initially and on request for reconsideration. [35 U.S.C. 6](#).

4. Designation of members of the Patent Trial and Appeal Board to conduct proceedings in an interference including the determination of priority and patentability of invention. [Pre-AIA 35 U.S.C. 6](#).

5. Designation of members of the Patent Trial and Appeal Board to review appeals of *inter partes* reexaminations.

6. Requests related to superintending the functions of the Patent Trial and Appeal Board, including:

a. Requests for decision on a question of policy certified by a panel or an administrative patent judge of the Patent Trial and Appeal Board. [37 CFR 41.3\(a\)](#).

b. Petitions to review a determination of a non-compliant brief. [37 CFR 41.37\(d\)](#), [41.68\(c\)](#), and [41.71\(e\)](#).

c. Certification of a decision by a panel of the Patent Trial and Appeal Board to disqualify counsel for cause in a trial proceeding. [37 CFR 42.10\(d\)](#).

d. Extensions of pendency for a period of up to six months in an *inter partes* or a post-grant review proceeding. [37 CFR 42.100\(c\)](#), [42.200\(c\)](#), and [42.300\(c\)](#).

e. Petitions under [37 CFR 1.181](#), [1.182](#), and [1.183](#) from actions of the Patent Trial and Appeal Board.

f. Petitions for an extension of time for seeking rehearing in an *ex parte* appeal before the Patent Trial and Appeal Board.

g. Petitions to revive an application abandoned for, or an *ex parte* or *inter partes* reexamination terminated for, failure to file a timely corrected brief in reply to a Notification of Defective or Non-Compliant Brief. [37 CFR 1.137](#), [41.37](#), and [41.67](#).

h. Petitions to revive an *inter partes* reexamination terminated for failure to file a timely corrected Request to Reopen Prosecution in reply to an Order by the Patent Trial and Appeal Board denying a request to reopen prosecution pursuant to [37 CFR 41.77\(b\)\(1\)](#).

7. Petitions under [pre-AIA 35 U.S.C. 135\(c\)](#):

a. Petitions under [pre-AIA 35 U.S.C. 135\(c\)](#) and [37 CFR 41.205\(b\)](#) to permit the filing of an agreement or understanding during the 6-month period subsequent to termination of an interference.

b. Petitions under [37 CFR 41.205\(d\)](#) for access to copies of an interference agreement or understanding filed under [pre-AIA 35 U.S.C. 135\(c\)](#).

### **1002.02(g) Petitions Decided by the Administrative Patent Judges [R-07.2015]**

1. Certification of a question of policy to the Chief Administrative Patent Judge for decision. [37 CFR 41.3\(a\)](#).

2. Motion to waive or suspend any rule in Subpart D of part 41 of title 37 CFR. See [37 CFR 41.104\(b\)](#).

3. Declarations and re-declarations of interferences. [37 CFR 41.203](#).

4. Institutions and reinstations of derivation proceedings. [37 CFR 42.408\(a\)](#).

5. Motion to suspend an interference involving a patent under *ex parte* or *inter partes* reexamination. [37 CFR 1.565\(e\)](#) and [1.993](#).

### **1002.02(h) [Reserved]**

### **1002.02(i) Petitions Decided by the Commissioner for Trademarks [R-08.2012]**

Petitions relating to Trademarks are covered in Chapter 1700 of the [Trademark Manual of Examining Procedure](#).

### **1002.02(j) Petitions Decided by the Patent Trial and Appeal Board [R-07.2015]**

1. Requests in a reply brief to consider a new argument not previously raised in an appeal brief or not responsive to an argument raised by the examiner. [37 CFR 41.41\(b\)\(2\)](#).

2. Requests in an oral hearing to rely on a new argument based upon a recent relevant decision of the Patent Trial and Appeal Board or a Federal Court. [37 CFR 41.47\(e\)\(2\)](#).

3. Requests made in a request for rehearing to review a panel's failure to designate a new ground of rejection in its decision. [37 CFR 41.50\(c\)](#).

4. Petitions to institute a trial. [37 CFR 42.4\(a\)](#), [42.108](#), [42.208](#), [42.300](#), and [42.408](#).

5. Determination of the proper course of conduct in an interference or trial proceeding. [37 CFR 41.104](#), [42.5](#).

6. Authorizations to file a motion other than a petition requesting the institution of a trial. [37 CFR 41.121](#) and [42.20 – 42.25](#).

7. Motions including, but not limited to:

a. Requests for oral argument on an issue raised in a paper. [37 CFR 41.124\(a\)](#) and [42.70](#).

b. Requests to authorize binding arbitration to determine any issue. [37 CFR 41.126\(a\)](#).

c. Imposition of a sanction against a party for misconduct. [37 CFR 41.128\(a\)](#) and [42.12\(a\)](#).

d. Requests for additional discovery. [37 CFR 41.150\(c\)](#) and [42.51\(b\)\(2\)](#).

- e. Motions to exclude evidence. [37 CFR 41.155\(c\)](#) and [42.64\(c\)](#).
- f. Motions *in limine* for a ruling on the admissibility of evidence. [37 CFR 41.155\(d\)](#) and [42.64](#).
- g. Motions to compel testimony or production of documents or things. [37 CFR 41.156](#) and [42.52\(a\)](#).
- h. Motions related to the taking of testimony, including motions to quash. [37 CFR 41.157](#) and [42.53](#).
- i. Admissibility of expert testimony. [37 CFR 41.158](#) and [42.65](#).
- j. Requests for recognition of counsel *pro hac vice* in an interference or trial proceeding. [37 CFR 41.5\(a\)](#) and [42.10\(c\)](#).
- k. Disqualification of counsel for cause, subject to certification by the Chief Administrative Patent Judge, in an interference or trial proceeding. [37 CFR 41.5\(b\)](#) and [42.10\(d\)](#).
- l. Requests for withdrawal of counsel in an interference or trial proceeding. [37 CFR 41.5\(c\)](#) and [42.10\(e\)](#).
- m. Motions to seal a document or thing in a trial proceeding. [37 CFR 42.14](#), [42.54](#), and [42.55](#).
- n. Motions to expunge confidential information. [37 CFR 42.56](#).
- o. Requests to treat a settlement agreement as business confidential information. [37 CFR 42.74\(c\)](#).
- p. Motions by patent owners to amend a patent in an *inter partes* review or post-grant review proceeding. [37 CFR 42.121\(a\)](#), [42.221\(a\)](#).
- q. Motions to submit supplemental information. [37 CFR 42.123\(a\)](#), [42.223\(a\)](#).
- r. Motions to correct a clerical or typographical errors in a petition for *inter partes* or post-grant review. [37 CFR 42.104\(c\)](#), [42.204\(c\)](#), [42.304\(c\)](#).
- s. Requests for joinder. [37 CFR 42.122\(b\)](#), [42.222\(b\)](#).
- t. Requests to make a settlement agreement available to a Government agency or other person. [37 CFR 42.74\(c\)](#).

### **1002.02(k) Matters Decided by the General Counsel, the Office of General Law and the Solicitor [R-07.2022]**

#### **1002.02(k)(1) Petitions and Matters Decided by the General Counsel [R-07.2015]**

1. Requests for confidentiality waiver under [35 U.S.C. 122](#).
2. Petitions (under [37 CFR 90.3\(c\)](#) or 37 CFR 2.145(e)) seeking to extend the time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action seeking judicial review of a decision of the Patent Trial and Appeal Board or the Trademark Trial and Appeal Board.
3. Petitions under [37 CFR 11.2\(d\)](#) from a final decision of the Director of the Office of Enrollment and Discipline, regarding enrollment or recognition.
4. Petitions under [37 CFR 11.2\(e\)](#) from a final decision of the Director of the Office of Enrollment and Discipline, regarding disciplinary matters.
5. Appeals under [37 CFR 11.55](#) of initial decisions of hearing officers and requests for reconsideration under [37 CFR 11.56\(c\)](#) in proceedings under [35 U.S.C. 32](#) in which the Director of the Office of Enrollment and Discipline seeks to exclude or suspend a practitioner from practice before the United States Patent and Trademark Office.
6. All contested decisions involving the Office of Enrollment and Discipline.

#### **1002.02(k)(2) Requests Decided by the Office of General Law [R-07.2015]**

1. Requests filed under the Freedom of Information Act (FOIA).
2. Administrative appeals of the FOIA Officer's decision.
3. Certain uncontested decisions involving the Office of Enrollment and Discipline.

**1002.02(k)(3) Petitions Decided by the Solicitor [R-08.2012]**

1. Petitions for extension of time in court matters [35 U.S.C. 142](#), [145](#), and [146](#).
2. Petitions relating to *ex parte* questions in cases before the Court of Appeals for the Federal Circuit.

The Office of the Solicitor is available to render legal advice to any deciding official in connection with any petition.

**1002.02(l) Requests Decided by the Certificates of Correction Branch [R-01.2024]**

1. Requests for Certificates of Correction under [37 CFR 1.322](#) or [1.323](#) except for denials on grounds requiring consideration by the Chief Administrative Patent Judge or the supervisory patent examiners otherwise provided for, [MPEP §§ 1480](#), [1481](#) and [1485](#).
2. Request to change inventorship pursuant to court order, [37 CFR 1.324](#), [MPEP § 1481.02](#).

**1002.02(m) Petitions Decided by the Director of the Office of Enrollment and Discipline [R-07.2015]**

1. Petitions regarding enrollment or recognition under [37 CFR 11.2\(c\)](#).
2. Requests for limited recognition under [37 CFR 11.9](#).
3. Petitions for reinstatement under [37 CFR 11.60](#).
4. Petitions to suspend the rules under [37 CFR 11.3](#).
5. Petition to withdraw a Rule to Show Cause under [37 CFR 11.11\(b\)](#).

**1002.02(n) [Reserved]****1002.02(o) Petitions and Other Matters Decided by the Deputy Director of the USPTO [R-07.2015]**

The Deputy Director of the USPTO has been delegated the authority to decide petitions to the Director of the USPTO from actions taken by the Patent Trial and Appeal Board for matters not otherwise delegated to the Chief Administrative Patent Judge, the Deputy Chief Administrative Patent Judge, a Vice Chief Administrative Patent Judge, or administrative patent judge(s). If there is a vacancy in the position of Deputy Director of the USPTO, decisions on these petitions will be signed by the Director of the USPTO.

Upon receipt of a petition, the entire file is to be forwarded to the Office of the Solicitor. The Solicitor is directed to promptly cause a review to be made of the petition and to prepare a draft decision for the Deputy Director or Director of the USPTO as may be appropriate. The Solicitor is authorized to take any interlocutory action, i.e., extending times for filing oppositions and seeking judicial review, obtaining agreement on facts from the parties, etc., as may be necessary to promptly dispose of the petition.

**1002.02(p) Petitions and Matters Decided by the Director of International Patent Legal Administration [R-01.2024]**

1. Petitions to withdraw the Notice of Acceptance and/or filing receipt and indication of the steps necessary for completion of the national stage in a national application requesting treatment under [35 U.S.C. 371](#).
2. Petitions for the withdrawal of attorney or agent of record in proceedings before PCT Operations and/or International Patent Legal Administration, [37 CFR 1.36](#), [MPEP § 402.06](#).
3. Petitions for access to an international application or a national application (i.e., a national stage application or a national application which is



continuing from an international application) pending in PCT Operations and/or International Patent Legal Administration.

4. Requests under [37 CFR 1.26](#) or [1.446](#) for refund of fees paid in an international application or in a national application (i.e., a national stage application or a national application which is continuing from an international application) before PCT Operations and/or International Patent Legal Administration.

5. Petitions under [37 CFR 1.182](#) to convert a national application which was filed under [35 U.S.C. 371](#) to an application filed under [35 U.S.C. 111\(a\)](#) or to convert a national application which was filed under [35 U.S.C. 111\(a\)](#) to an application filed under [35 U.S.C. 371](#).

6. Petitions under [37 CFR 1.181](#) to withdraw the holding of abandonment where the holding was made in PCT Operations or in International Patent Legal Administration.

7. Petitions under [37 CFR 1.181](#) to invoke the supervisory authority of the Director of the USPTO in circumstances arising in PCT Operations and/or International Patent Legal Administration other than the circumstances set forth in paragraph 6, above.

8. Petitions under [37 CFR 1.137](#) (unintentional delay) to revive an application filed under the Patent Cooperation Treaty (PCT).

9. Petitions under [pre-AIA 37 CFR 1.47](#) or a submission under [pre-AIA 37 CFR 1.42](#) to accept the signature in a national stage application on behalf of an applicant.

10. Requests under [37 CFR 1.48](#) or a submission under [37 CFR 1.28](#) (change of inventorship and small entity status, respectively) in a national stage application prior to entry into the national stage.

11. Petitions under [37 CFR 1.182](#) or [1.183](#) filed in an international application relating to filing date matters, drawing problems, priority claim issues, Priority Mail Express<sup>®</sup> problems, Chapter II Demand problems, issues relating to obvious mistakes and issues relating to withdrawal.

12. Petitions under [37 CFR 1.182](#) or [1.183](#) dealing with circumstances other than those set forth in paragraph 11, but relating to issues under the PCT.

13. Decisions withdrawing an examiner's office action or other action in an application where either the application or the action is not in compliance with the provisions of the PCT, as implemented under U.S. Law or the Regulations.

14. Requests under [PCT Rule 26 bis.3](#), [37 CFR 1.55](#), or [37 CFR 1.78](#) to restore the right of priority or domestic benefit in an international application filed under the PCT, a national stage application under [35 U.S.C. 371](#), or in an application which claims the benefit of or priority to an international application filed under the PCT.

15. Petitions for the acceptance of a delayed priority claim under [37 CFR 1.55](#) filed in a national stage application under [35 U.S.C. 371](#) or in an application which claims the benefit of or priority to an international application filed under the PCT.

16. Petitions for the acceptance of a delayed domestic benefit claim under [37 CFR 1.78](#) filed in a national stage application under [35 U.S.C. 371](#) or in an application which claims the benefit of or priority to an international application filed under the PCT.

17. Petitions dealing with PCT related issues in an application filed under [35 U.S.C. 111\(a\)](#) (such as applications where there is a potential claim for benefit under [35 U.S.C. 365](#)).

18. Petitions for extensions of time under [37 CFR 1.136\(b\)](#) in applications before the International Patent Legal Administration.

19. Petitions relating to international applications filed under the Patent Cooperation Treaty not otherwise provided for.

20. Requests for participation in a Patent Prosecution Highway program ([www.uspto.gov/PPH](http://www.uspto.gov/PPH)).

21. Petitions to Make Special in accordance with international agreements with foreign patent offices.

22. Requests for a certificate of correction that affects related U.S. application data or foreign priority data in a patent resulting from an application filed as a national stage application under [35 U.S.C. 371](#) or which claims the benefit of or priority to an international application filed under the PCT.

23. Petitions for the late filing of a certified copy of foreign application under [37 CFR 1.55\(f\)](#) dealing with PCT related issues (such as where the petition, filed in a national stage application, indicates that the certified copy was furnished in the international stage).

24. Decisions to withdraw national stage applications under [35 U.S.C. 371](#) from issue either under [37 CFR 1.313\(a\)](#) before payment of the issue fee or under [37 CFR 1.313\(b\)](#) after payment of the issue fee for failure to comply with [35 U.S.C. 371\(c\)](#).

25. Petition under [37 CFR 1.1023\(b\)](#) to accord the international design application a filing date in the United States other than the date of international filing.

26. Petitions under [37 CFR 1.1051](#) to excuse the failure to act within prescribed time limits under the Hague Agreement.

27. Petitions under [37 CFR 1.1052](#) to convert an international design application to a design application under 35 U.S.C. chapter 16.

28. Decisions withdrawing an examiner's office action or other action in an application where either the application or the action is not in compliance with the provisions of the Hague Agreement, as implemented under U.S. Law or the Regulations.

29. Petitions under [37 CFR 1.181](#), [1.182](#), or [1.183](#) in international design applications relating to issues under the Hague Agreement.

30. Decisions relating to applications filed under the Hague Agreement not otherwise provided for.

### **1002.02(q) Petitions and Requests Decided by the Director of Office of Patent Application Processing (OPAP) [R-01.2024]**

1. Requests under [37 CFR 1.48](#) filed on or after September 16, 2012 to correct inventorship in a nonprovisional application.

2. Requests under [37 CFR 1.48\(d\)](#) to add the name of an inventor in a provisional application.

3. Requests under [37 CFR 1.48\(e\)](#) to delete the name of the person erroneously named as an inventor in a provisional application.

4. Petitions to convert a nonprovisional application filed under [37 CFR 1.53\(b\)](#) to a provisional application under [37 CFR 1.53\(c\)](#) where the nonprovisional application is before the Office of Patent Application Processing.

5. Requests to convert a provisional application filed under [37 CFR 1.53\(c\)](#) to a nonprovisional application under [37 CFR 1.53\(b\)](#) where the provisional application is before the Office of Patent Application Processing.

6. Petitions under [37 CFR 1.182](#) to accept omitted page(s) or drawing(s) and be accorded a filing date as of the date of such submission, or to accept drawings for purposes of a patent application publication.

7. Petitions for extension of time under [37 CFR 1.136\(b\)](#) in applications before the Office of Patent Application Processing.

8. Petitions for the withdrawal of attorney or agent of record under [37 CFR 1.36](#) in patent applications involved in proceedings before the Office of Patent Application Processing.

### **1002.02(r) Petitions Decided by the Director of Office of Data Management [R-07.2015]**

1. Petitions to withdraw holding of abandonment where a notice of abandonment has been, or could have been properly mailed by the Office of Data Management.

2. Petitions for express abandonment to avoid publication of the application (should be directed to Mail Stop Express Abandonment), [37 CFR 1.138\(c\)](#), [MPEP § 711.01](#).

3. Requests for republication of an application, [37 CFR 1.221\(a\)](#), [MPEP § 1130](#).

### **1002.02(s) Petitions and Matters Decided in the Technology Centers [R-07.2015]**

The following petitions to make patent applications special under the accelerated examination program set forth in [MPEP § 708.02\(a\)](#) are decided in the Technology Centers:

a. petitions filed with payment of fee under [37 CFR 1.17\(h\)](#);

b. petitions filed with a statement that the invention will materially enhance the quality of the environment ([37 CFR 1.102\(c\)\(2\)\(i\)](#) and [MPEP § 708.02](#), subsection III);

c. petitions filed with a statement that the invention will materially contribute to the development or conservation of energy resources ([37 CFR 1.102\(c\)\(2\)\(ii\)](#) and [MPEP § 708.02](#), subsection IV);

d. petitions filed with a statement that the invention will materially contribute to countering terrorism ([37 CFR 1.102\(c\)\(2\)\(iii\)](#) and [MPEP § 708.02](#), subsection V); or

e. petitions filed for reasons not otherwise provided for.

### **1002.02(t) Requests Decided by the Deputy Commissioner for Patents who oversees the Office of Information Technology for Patents [R-01.2024]**

The Deputy Commissioner for Patents who oversees the Office of Information Technology for Patents has been delegated the authority to decide requests from participants in the Electronic Office (e-Office) Action Program to reset a time period for reply when a reply is due, an email notification has been delayed or was not received, and the participant contacted

the Electronic Business Center (EBC) within one-month from the email date. [MPEP § 710.06](#).

### **1003 Matters Submitted to Technology Center Directors [R-01.2024]**

The following is a list of matters which are submitted to the appropriate Technology Center Director, together with a reference to any section of this manual where such matters are more fully treated.

1. Requests for a certificate of correction in which the:

a. request raises a novel issue or about which there is some question; or

b. request is for a patent known to be in litigation.

2. Return of papers entered in the file wrapper. See [MPEP § 719.01](#).

3. Certain rejections on double patenting of divisional (or parent) case when restriction or election of species has previously been required, [MPEP § 804.04](#).

4. Request for patentability report, [MPEP § 705.01\(e\)](#).

5. Actions which hold claims unpatentable on grounds of rejection that would also be applicable to corresponding claims in a patent.

6. Interferences between applications neither of which is in condition for allowance.

7. Letters requesting jurisdiction from the Patent Trial and Appeal Board of applications involved in appeal or interference.

8. Letters to an applicant suggesting claims for purposes of interference, the adoption of which by the applicant would result in the withdrawal of an application from issue, [MPEP § 2304.02](#).

9. Examiner's answers containing a new interpretation of law. See [MPEP § 1207.02](#).

10. Proposed interferences between applications whose effective filing dates differ by more than 6 months. See [MPEP § 2302](#).
  11. Protests filed against issuance of a patent. See [MPEP § 1901.06](#).
  12. Letters suggesting claims to an application in issue for purposes of interference with a patent. See [MPEP § 2304.04](#).
  13. Requests by the examiner to the Patent Trial and Appeal Board for reconsideration of a decision before forwarding to the Office of the Deputy Commissioner for Patents who oversees the Office of Petitions, [MPEP § 1214.04](#).
  14. Second or subsequent suspension of action in patent application under [37 CFR 1.103](#) on examiner's initiative. [MPEP § 709](#).
  15. Request by the examiner to withdraw an application from issue, [MPEP § 1308.01](#).
  16. An unusual fact situation in a patent that establishes:
    - a. there is a "compelling reason" to order reexamination, and
    - b. at least one claim in the patent is *prima facie* unpatentable over prior patents and/or printed publications. See [37 CFR 1.520](#), [MPEP § 2239](#).
  17. Applications containing examiner's answers lacking the appropriate indication that an appeal conference was held. See [MPEP § 1207.01](#).
3. Quayle actions ([MPEP § 714.14](#)).
  4. Final rejections ([MPEP § 706.07](#)).
  5. Final Office actions containing a final requirement for restriction ([MPEP § 803.01](#)).
  6. Withdrawal of final rejection ([MPEP §§ 706.07\(d\)](#) and [706.07\(e\)](#)).
  7. Actions on amendments submitted after final rejection ([MPEP § 714.12](#)).
  8. All examiner's answers on appeal ([MPEP § 1207](#)).
  9. Actions reopening prosecution ([MPEP § 1214.07](#)).
  10. Entry of amendments under [37 CFR 1.312](#) that are directed merely to formal matters or the cancellation of claims ([MPEP § 714.16](#)).
  11. Rejection of a previously allowed claim ([MPEP § 706.04](#)).
  12. Holding of abandonment for insufficient reply ([MPEP § 711.03\(a\)](#)).
  13. Decision on affidavits or declarations (for example, under [37 CFR 1.130\(a\)](#) ([MPEP § 717.01\(a\) et seq.](#)), [37 CFR 1.130\(b\)](#) ([MPEP § 717.01\(b\) et seq.](#)), [37 CFR 1.131\(a\)](#) ([MPEP § 715.08](#)), [37 CFR 1.131\(c\)](#) ([MPEP § 718](#)), or [37 CFR 1.132](#) ([MPEP § 716](#))).
  14. First request for suspension of examiner's action ([MPEP § 709](#)).
  15. Decision on reissue oath or declaration ([MPEP § 1414](#)).
  16. International Preliminary Examination Reports ([MPEP § 1879](#)).
  17. Classification of allowed cases ([MPEP § 903.07](#)).
  18. Treatment of newly filed application which obviously fails to comply with [35 U.S.C. 112](#) ([MPEP § 702.01](#)).

All unusual questions of practice may be referred to the Technology Center Directors.

### **1004 Actions Which Require the Attention of a Primary Examiner [R-10.2019]**

Existing practice requires the primary examiner to be personally responsible for the following actions:

1. Allowances ([MPEP § 1302.13](#)).
2. Examiner's amendments ([MPEP § 1302.04](#)).

19. Consideration of the advisability of a patentability report ([MPEP § 705.01\(a\)](#)).
  20. Requests filed prior to September 16, 2012 under 37 CFR 1.48 for correction of inventorship or to accept amendments, statements, or oaths or declarations under 37 CFR 1.48 (See MPEP § 602.01(c)(3) in Revision 08.2017 of the Ninth Edition of the MPEP, published in January 2018).
  21. Actions suggesting claims for interference purposes ([MPEP §§ 2304.04, 2304.04\(b\)](#)). Note that the examiner should consult with a Technology Center Practice Specialist (TCPS), [MPEP § 2304.04](#).
  22. Actions involving copied patent claims ([MPEP § 2304.04\(b\)](#)).
  23. Suggesting an interference ([MPEP § 2304.04](#)).
  24. Calling Administrative Patent Judge's attention to a discovered reference which makes a claim corresponding to a count unpatentable.
- For matters decided by supervisory patent examiners, see [MPEP § 1002.02\(d\)](#).
- For a list of actions that are to be submitted to the Technology Center Directors, see [MPEP §§ 1002.02\(c\)](#) and [1003](#).

### **1005 Exceptions to Partial Signatory Authority [R-07.2015]**

Examiners who are delegated partial signatory authority are expected to sign their own actions with the exception of the following actions which require the signature of a primary examiner, Technology Center Director, or practice specialist:

1. Allowances ([MPEP § 1302.13](#)).
2. Examiner's amendments ([MPEP § 1302.04](#)).
3. Quayle actions ([MPEP § 714.14](#)).
4. Final rejections ([MPEP §§ 706.07](#) and [803.01](#)).
5. Withdrawal of final rejection ([MPEP §§ 706.07\(d\)](#) and [706.07\(e\)](#)).
6. Actions on amendments submitted after final rejection ([MPEP § 714.12](#)).
7. Examiner's answers on appeal ([MPEP § 1207](#)).
8. Actions reopening prosecution ([MPEP § 1214.07](#)).
9. Requests for withdrawal from issue ([MPEP § 1308](#)).
10. [37 CFR 1.312](#) amendments ([MPEP § 714.16](#)).
11. Rejection of previously allowed claim ([MPEP § 706.04](#)).
12. Final holding of abandonment for insufficient reply ([MPEP § 711.03\(a\)](#)).
13. Actions based on affidavit or declaration evidence (for example, under [37 CFR 1.130\(a\)](#) ([MPEP § 717.01\(a\) et seq.](#)), [37 CFR 1.130\(b\)](#) ([MPEP § 717.01\(b\) et seq.](#)), [37 CFR 1.131\(a\)](#) ([MPEP § 715.08](#)), [37 CFR 1.131\(c\)](#) ([MPEP § 718](#)), or [37 CFR 1.132](#) ([MPEP § 716](#))).
14. Suspension of examiner's action ([MPEP § 709](#)).
15. Reissue applications (e.g., decisions on reissue oath or declaration, [MPEP § 1444](#)).
16. Requests for an extension of time under [37 CFR 1.136\(b\)](#), ([MPEP § 710.02\(e\)](#)).
17. Reexamination proceedings ([MPEP § 2236](#)).
18. International Preliminary Examination Reports ([MPEP § 1879](#)).
19. Actions suggesting claims for interference purposes ([MPEP §§ 2304.04, 2304.04\(b\)](#)).
20. Suggesting an interference ([MPEP § 2302](#)).
21. Actions involving copied patent claims ([MPEP § 2304.04\(b\)](#)).