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Rule 51. General requisites of an application. Applications for patents must be made to the Commissioner of Patents. A complete application comprises:

- (a) A petition or request for a patent, see rule 61.
- (b) A specification, including a claim or claims, see rules 71 to 77.
- (c) An oath [or declaration] see rule 65.
- (d) Drawings, when necessary, see rules 81 to 88.
- (e) The prescribed filing fee. (See rule 21 for filing fees.)

THE APPLICATION

The petition, specification, and oath must be in the English language and must be legibly typewritten, written or printed in permanent ink. See Rule 52 and 608.01.

The parts of the application may be included in a single document, and an approved single-signature form may be used.

Determination of completeness of an application is covered in 506.

The petition, specification and oath are secured together in a file wrapper, bearing appropriate identifying data including the serial number and filing date (717).

NOTE

Reissue patents, 1401.

Design patents, Chapter 1500.

Plant patents, Chapter 1600.

A model, exhibit or specimen is not required as part of the application as filed, although it may be required in the prosecution of the application (Rules 91-93, 608.03).

Rule 59. Papers of complete application not to be returned. The papers in a complete application will not be returned for any purpose whatever. If applicants have not preserved copies of the papers, the Office will furnish copies at the usual cost. See rule 87 for return of drawing.

See, however, 604.04(a).

601 Petition

Rule 61. Petition. The petition must be addressed to the Commissioner of Patents and request the grant of a patent. The residence, and post office address of the petitioner must appear in the petition if not stated else-

where in the application. The petition need not be separately signed when part of and attached to the specification and oath, otherwise it must be signed by the petitioner.

The power of attorney or authorization of agent may be incorporated in the petition.

Petitioner's or applicant's post office address is discussed in 605.03.

The petition need not be dated.

601.01 Amendment of Petition

Those portions of the petition other than the post office address (see 605.03) may be amended by the attorney. (Basis: Order No. 1994.)

601.02 Power of Attorney or Authorization of Agent

The attorney's or agent's full post office address should be given in every power of attorney or authority of agent. The prompt delivery of communications will thereby be facilitated. (Basis: Notice of Oct. 8, 1946.)

Usually a power of attorney or authorization of agent is incorporated in either the petition or single signature form. See 402 and 605.04(a).

602 Original Oath (or Declaration)

Rule 65. Statement of Applicant. (a) (1) The applicant, if the inventor, must state that he verily believes himself to be the original and first inventor or discoverer of the process, machine, manufacture, composition of matter, or improvement thereof, for which he solicits a patent; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, and shall state of what country he is a citizen and where he resides, and whether he is a sole or joint inventor of the invention claimed in his application. In every original application the applicant must distinctly state that to the best of his knowledge and belief the invention has not been in public use or on sale in the United States more than one year prior to his application, or patented or described in any printed publication in any country before his invention or more than one year prior to his application, or patented in any foreign country prior to the date of his application on an application filed by himself or his legal representatives or assigns more than twelve months prior to his application in this country. He shall state whether or not any application for patent on the same invention has been filed in any foreign country, either by the applicant or by his legal representatives or assigns. If any such application has been filed, the applicant shall name the country in which the earliest such application was filed, and shall give the day, month, and year of

filing; he shall also identify by country and by day, month, and year of filing, every such foreign application filed more than twelve months before the filing of the application in this country.

(2) This statement (i) must be subscribed to by the applicant, and (ii) must either (a) be sworn to (or affirmed) as provided in Rule 66, or (b) include the personal declaration of the applicant as prescribed in Rule 68. See Rule 153 for design cases and Rule 162 for plant cases.

(b) If the application is made as provided in Rules 42, 43, or 47, the applicant shall state his relationship to the inventor and, upon information and belief, the facts which the inventor is required by this rule to state.

(c) An additional statement may be required if the application has not been filed in the Patent Office within a reasonable time after execution of the original statement.

Rule 68. Declaration in Lieu of Application Oath.

(a) The applicant may, in lieu of making an oath or affirmation in the manner provided by Rule 66, set forth in the body of the statement required from him by Rule 65 his written declaration that all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true, if, and only if, the applicant is, on the same

paper, warned that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing thereon.

(b) A written declaration by the applicant, satisfying the foregoing conditions, may also be used in lieu of an oath when presenting a claim for matter not originally claimed (Rule 67), when applying for a reissue patent (Rule 171 and 172), when applying for a patent for designs (Rule 151 and 153), and when applying for a patent for plants (Rule 161 and 162).

Note that a Rule 68 Declaration need not be ribboned to the other papers, even if signed in a country foreign to the United States. When a Declaration is used, it is unnecessary to appear before any official in connection with the making of the Declaration. It must, however, since it is an integral part of the application, be maintained together therewith. Further details are given in 29 F.R. 18502; 811 O.G. 2. (Basis: Notice of March 4, 1965.)

By statute, 35 U.S.C. 25, the Commissioner has been empowered to prescribe instances when a written declaration may be accepted in lieu of the oath for "any document to be filed in the Patent Office".

Rule 65 has been amended with respect to the recitation of prior foreign applications. The applicant must state that no foreign applications have been filed, if such is the case. If all foreign applications have been filed within twelve months of the U.S. filing date, he is required only to recite the first such foreign application, and it should be clear that the foreign application referred to is the first filed foreign application. The applicant is required to recite all foreign applications filed more than twelve months prior to the U.S. filing. It is desirable to give the foreign serial number as well as the filing date of the first filed foreign application, especially if the inventor's name will not appear in a certified copy of said foreign application. It should be noted that an oath in the form proper before January 1, 1953 is still acceptable.

The single signature form mentioned in 605.04(a) includes the oath.

An oath which refers to applicant as "the petitioner" need not contain applicant's name in the body thereof.

In the oath, the jurat must be filled out, and the word "sole" or "only" must appear if there is but one inventor, and "joint" if two or more inventors.

When joint inventors execute separate oaths, each oath should make reference to the fact that the affiant is a joint inventor together with each of the other inventors indicating them by name. This may be done by stating that he does verily believe himself to be the original, first and joint inventor together with "A or A & B, etc." as the facts may be.

A seal is usually impressed. See 604 and Rule 66. However oaths executed in many states including Alabama, Louisiana, Maryland, Massachusetts, New Jersey, New York, Rhode Island, South Carolina and Virginia need not be impressed with a seal.

If a claim is presented for matter not originally claimed or embraced in the original statement of invention in the specification a supplemental oath is required. Rule 67, 603.

602.01 Oath Cannot Be Amended

The wording of an oath cannot be amended. If the wording is not correct or if all of the required affirmations have not been made or if it has not been properly subscribed to, a new oath must be required. However, in some cases a deficiency in the oath can be corrected by a supplemental paper and a new oath is not necessary.

For example, if the oath does not set forth evidence that the notary was acting within his jurisdiction at the time he administered the

oath a certificate of the notary that the oath was taken within his jurisdiction will correct the deficiency. See 604.02.

602.02 New Oath or Substitute for Original

In requiring a new oath, the Examiner should always give the reason for the requirement and call attention to the fact that the application of which it is to form a part must be properly identified in the body of the new oath, preferably by giving the serial number and the date of filing.

Where neither the original oath, nor the substitute oath is complete in itself, but the two taken together give all the required data, no further oath is needed.

602.03 Defective Declaration or Oath, When Waived

In the first Office action the Examiner must point out every deficiency in a declaration or oath and require that the same be remedied. However, when an application is otherwise ready for issue, an Examiner with full signatory authority may waive the following minor deficiencies:

1. A delay of somewhat more than five weeks plus mailing time in filing after the time of making the declaration, or the time of execution in the case of an oath.
2. Residence of an applicant if a post office address is given.
3. Minor deficiencies in the execution of an oath.

If any of the above are waived, the Examiner should write in the margin of the declaration or oath a notation such as "Date of declaration waived; application ready for issue" and initial.

602.04 Foreign Oath

An oath executed in a foreign country must be properly authenticated. See 604 and Rule 66.

602.04(a) Foreign Oath Is Ribbioned to Other Application Papers

Extract from Rule 66. (b) When the oath is taken before an officer in a country foreign to the United States, all the application papers, except the drawings, must be attached together and a ribbon passed one or more times through all the sheets of the application, except the drawings, and the ends of said ribbon brought together under the seal before the latter is affixed and impressed, or each sheet must be impressed

with the official seal of the officer before whom the oath is taken. If the papers as filed are not properly ribboned or each sheet impressed with the seal, the case will be accepted for examination but before it is allowed, duplicate papers, prepared in compliance with the foregoing sentence, must be filed.

Note that a Declaration in Lieu of Application Oath (Rule 68) need not be ribboned to the other papers. It must, however, be maintained together therewith. (Basis: Notice of March 4, 1965.)

602.05 Oath—Date of Execution

The time elapsed between the date of execution of oath and the filing date of the application should be checked for compliance with Rule 65(c). If an unreasonable time has elapsed, the Examiner should call for a new oath. What constitutes a reasonable time is a question of judgment to be determined by all the circumstances in the particular case. (Five weeks plus time of transmission in the mails was considered reasonable under the circumstances of *ex parte* Heinze, 1919 C.D. 67; 265 O.G. 145). Note 602.05(a).

If no date of execution appears, applicant is required to file either a new oath or a certificate from the notary giving the actual date when the oath was taken.

602.05(a) Oath in Division and Continuation Cases

Where the date of filing the application is not the date that determines the statutory twelve months' period, as in divisional and continuation cases, it is immaterial, so far as concerns the acceptability of the oath, how long a time intervenes between the execution of the oath and the filing of the application.

When a divisional application is identical with the original application as filed, signing and execution of the oath in the divisional case may be omitted. (See Rule 147, 201.06.)

603 Supplemental Oath

Rule 67. Supplemental oath for matter not originally claimed. (a) When an applicant presents a claim for matter originally shown or described but not substantially embraced in the statement of invention or claim originally presented, he shall file a supplemental oath to the effect that the subject matter of the proposed amendment was part of his invention; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than one year before his application, or in

public use or on sale in the United States for more than one year before the date of his application, that said invention has not been patented in any foreign country prior to the date of his application in this country on an application filed by himself or his legal representatives or assigns more than twelve months prior to his application in the United States, and has not been abandoned. Such supplemental oath should accompany and properly identify the proposed amendment, otherwise the proposed amendment may be refused consideration.

(b) In proper cases the oath here required may be made on information and belief by an applicant other than inventor.

Rule 67 requires in the supplemental oath substantially all the data called for in Rule 65 for the original oath. As to the purpose to be served by the supplemental oath, the Examiner should bear in mind that it cannot be availed of to introduce new matter into an application.

603.01 Supplemental Oath Filed After Allowance

Since the decision in *Cutter Co. v. Metropolitan Electric Mfg. Co.*, 275 Fed. 158, many supplemental oaths covering the claims in the case have been filed after the case is allowed. Such oaths may be filed as a matter of right and when received they will be placed in the file by the Issue Branch, but their receipt will not be acknowledged to the party filing them. They should not be filed or considered as amendments under Rule 312, since they make no change in the wording of the papers on file. (Basis: Order No. 2798.) See 714.16.

604 Administration or Execution of Oath

Extract From Rule 66. Officers authorized to administer oaths. (a) The oath or affirmation may be made before any person within the United States authorized by law to administer oaths, or, when made in a foreign country, before any diplomatic or consular officer of the United States authorized to administer oaths, or before any officer having an official seal and authorized to administer oaths in the foreign country in which the applicant may be, whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States, the oath being attested in all cases in this and other countries, by the proper official seal of the officer before whom the oath or affirmation is made. Such oath or affirmation shall be valid as to execution if it complies with the laws of the state or country where made. When the person before whom the oath or affirmation is made in this country is not provided with a seal, his official character shall be established by competent evidence, as by

a certificate from a clerk of a court of record or other proper officer having a seal.

NOTE: Seals, 604.01.
When unnecessary, 604.01.
In foreign case, 602.04(a).

604.01 Seal

When the person before whom the oath or affirmation is made in this country is not provided with a seal, his official character shall be established by competent evidence, as by a certificate from a clerk of a court of record or other proper officer having a seal, except as noted in 604.03(a), in which situations no seal is necessary. When the issue concerns the authority of the person administering the oath, the Examiner should require proof of Authority. Depending on the jurisdiction, the "seal" may be either embossed or rubber stamped. The latter should not be confused with a stamped legend indicating only the date of expiration of the notary's commission.

See also 602.04(a) on foreign executed oath and seal. In some jurisdictions, the seal of the notary is not required but the official title of the officer must be on the oath. This applies to Alabama, California (certain notaries), Louisiana, Maryland, Massachusetts, New Jersey, New York, Ohio, Puerto Rico, Rhode Island, South Carolina and Virginia.

604.02 Venue

That portion of an oath or affidavit indicating where the oath is taken is known as the venue. Where the county and state in the venue agree with the county and state in the seal, no problem arises. If the venue and seal do not correspond in county and state, the jurisdiction of the notary must be determined from statements by the notary appearing on the oath, or from the listing at 604.03. Venue and notary jurisdiction must correspond or the oath is improper. The oath should show on its face that it was taken within the jurisdiction of the certifying officer or notary. This may be given either in the venue or in the body of the jurat. Otherwise, a new oath, or a certificate of the notary that the oath was taken within his jurisdiction, must be required. Ex parte Delavoye, 1906 C.D. 320; 124 O.G. 626; Ex parte Irwin, 1928 C.D. 13; 367 O.G. 701.

604.03 Notaries and Extent of Jurisdiction

The extent of the jurisdiction of the notaries in the various states is given below.

STATEWIDE

| | |
|----------------------|----------------|
| Alabama | Montana |
| Alaska | Nevada |
| Arkansas | New Hampshire |
| California | New Jersey |
| Canal Zone | New Mexico |
| Colorado | New York |
| Connecticut | North Carolina |
| Delaware | North Dakota |
| District of Columbia | Oklahoma |
| Florida | Oregon |
| Georgia | Pennsylvania |
| Idaho | Puerto Rico |
| Illinois | Rhode Island |
| Indiana | South Carolina |
| Louisiana | South Dakota |
| Maine | Utah |
| Maryland | Vermont |
| Massachusetts | Washington |
| Michigan | Wisconsin |
| Minnesota | Wyoming |

COUNTY ONLY

| | |
|-------------|---------------|
| Arizona | Tennessee |
| Kansas | Texas |
| Mississippi | West Virginia |

VARIABLE JURISDICTION

(See explanatory paragraphs (a-f) below)

| | |
|-------------|-------------|
| Hawaii(e) | Nebraska(b) |
| Iowa(a) | Ohio(f) |
| Kentucky(a) | Virginia(d) |
| Missouri(a) | |

(a) In Iowa, Kentucky, and Missouri a notary, by filing a proper certificate in counties adjoining that for which he is appointed, may have authority to administer oaths in such counties also.

(b) In Nebraska a notary with a county commission can act only in that county; but he may have a general commission and may then act in any county on filing proper papers.

(d) In Virginia, a notary may be appointed for one or more counties and cities, or for the commonwealth at large.

(e) In Hawaii it is generally limited to the judicial circuit.

(f) In Ohio the law, as amended in 1941, gives notaries who are attorneys-at-law statewide jurisdiction and other notaries jurisdiction in the county of appointment. The extent of jurisdiction is stated on the seal or near the notary's signature. The title "Attorney-at-Law" should appear near the signature to indicate that a notary public who is also an attorney administered the oath.

The notary does not have to state when his commission expires but if he does so state, the

oath should be inspected to determine whether or not the notary's commission had expired at the date of execution of the oath.

604.03(a) Notarial Powers of Some Military Officers

Public Law 506 (81st Congress, Second Session) Article 136: (a) The following persons on active duty in the armed forces . . . shall have the general powers of a notary public and of a consul of the United States, in the performance of all notarial acts to be executed by members of any of the armed forces, wherever they may be, and by other persons subject to this code [Uniform Code of Military Justice] outside the continental limits of the United States:

- (1) All judge advocates of the Army and Air Force;
- (2) All law specialists;
- (3) All summary courts-martial;
- (4) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;
- (5) All commanding officers of the Navy and Coast Guard;
- (6) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers; and
- (7) All other persons designated by regulations of the armed forces or by statute.

(d) The signature without seal of any such person acting as notary, together with the title of his office, shall be prima facie evidence of his authority.

604.04 Consul

When the oath is made in a foreign country, the authority of any officer other than a diplomatic or consular officer of the United States authorized to administer oaths must be proved by certificate of a diplomatic or consular officer of the United States. Rule 66, 604. This proof may be through an intermediary; e.g., the consul may certify as to the authority and jurisdiction of another official who, in turn, may certify as to the authority and jurisdiction of the officer before whom the oath is taken.

604.04(a) Consul-Omission of Certificate

Where the oath is taken before an officer in a foreign country other than a diplomatic or consular officer of the United States and whose authority is not authenticated, the application is nevertheless given a filing date for purposes of examination. The examiner, in his first Office action, should note this informality and require authentication of the oath by an ap-

propriate diplomatic or consular officer. The following language is suggested in requiring authentication of an oath:

"The oath is informal in that it lacks authentication by a diplomatic or consular officer of the United States; Rule 66(a). This informality can be overcome only by forwarding the original oath to the appropriate officer for authentication if applicant wishes to preserve his original filing date. Applicant should therefore request return of the oath for this purpose. Such request must be accompanied by an order for a copy of the oath to be retained in the file until the properly authenticated oath is returned. See section 604.04(a), MPEP. After the oath has been authenticated, it should be returned promptly to the Patent Office."

At the time of the next Office action the request for return of the oath, together with the application file and the copy of the oath, is submitted through the Supervisory Examiner to the Director of the Patent Examining Operation. If the request is approved by him, the oath will be returned by the examining division.

604.05 Consular Fee Stamp

Up to June 28, 1955, the statute (22 U.S.C. 1196) required consular officers to affix a fee stamp to papers in connection with which they had performed consular or notarial acts. The act performed was not legally valid in the United States unless this stamp had been affixed. Such stamps were not required of embassies and legations under the Notice of Aug. 4, 1914.

The above mentioned statute was repealed by an Act of Congress effective June 28, 1955, and the use of consular fee stamps has been discontinued. Hence all papers executed on or after that date that formerly required the consular fee stamp, are acceptable without such stamp. (Basis: Notice of Jan. 25, 1956.)

604.05(a) Omission of Consular Fee Stamp

In applications executed abroad prior to June 28, 1955 before a consular officer and in which a consular fee stamp is required but from which the required stamp is lacking, the Examiner should not require a consular fee stamp to be furnished. The applicant should be informed that the oath or authentication, as the case may be, does not carry the required consular fee stamp and that the applicant should obtain a statement from the consular officer that a fee stamp had been affixed when the paper was executed.

604.06 By Attorney in Case

The language of Rule 66 and 35 U.S.C. 115 is such that an attorney in the case is no

longer barred from administering the oath as notary. The Office presumes that an attorney acting as notary is cognizant of the extent of his authority and jurisdiction and will not know-

ingly jeopardize his client's rights by performing an illegal act. If such practice is permissible under the law of the jurisdiction where the oath is administered, then the oath is a valid oath.

The law of the District of Columbia prohibits the administering of oaths by the attorney in the case and hence the old bar still applies in the case of oaths administered in the District of Columbia. If the oath is known to be void because of being administered by the attorney in a jurisdiction where the law holds this to be invalid, the proper action for the Office to take is to strike the application since there is in effect no proper application before the Office and the Examiner will refer the file to the Solicitor's Office to initiate such action. (*Riegger v. Beierl*, 1910 C.D. 12; 150 O.G. 826.) See Rule 66 and 604.

605 Applicant

Rule 41. Applicant for patent. A patent must be applied for and the application papers must be signed and the necessary oath executed by the actual inventor in all cases, except as provided by rules 42, 43, and 47. See rule 147.

Unless the contrary is indicated, the word "applicant" when used in these rules refers to the inventor, joint inventors who have applied for a patent, or to the person mentioned in rules 42, 43, or 47 who has applied for a patent in place of the inventor.

Extract from Rule 45. Joint inventors. (a) Joint inventors must apply for a patent jointly and each must sign the application papers and make the required oath; neither of them alone, nor less than the entire number, can apply for a patent for an invention invented by them jointly, except as provided in rule 47.

For convertibility from a joint to sole or sole to joint application, see 201.03.

Rule 46. Assigned inventions and patents. In case the whole or a part interest in the invention or in the patent to be issued is assigned, the application must still be made by the inventor or one of the persons mentioned in rules 42, 43, or 47. However, the patent may be issued to the assignee or jointly to the inventor and the assignee as provided in rule 334.

This section concerns filing by the actual inventor. If filed by other, see 409.03.

NOTE

Disposition of application by inventor, 301.
Inventor dead or insane, 409.

Nationals of Germany or Japan may not apply for or obtain patents for any invention made, or upon which an application was filed by any such national, before January 1, 1946, in Germany or Japan or in the territory of any other of the Axis Powers or in any territory

occupied by the Axis forces. Public Law 380, Sec. 3, 602 O.G. 675-6.

605.01 Applicant's Citizenship

The statute (35 U.S.C. 115) requires an applicant to state his citizenship. Where an applicant is not a citizen of any country, a statement to this effect is accepted as satisfying the statutory requirement; but a statement as to citizenship applied for or first papers taken out looking to future citizenship in this (or any other) country does not meet the requirement.

605.02 Applicant's Residence

Applicant's place of residence (not to be confused with his Post Office address) can be furnished by the attorney. In the case of an applicant who is in the U.S. Army or U.S. Navy, a statement to that effect is sufficient as to residence. For change of residence see 717.02(b).

605.03 Applicant's Post Office Address

Applicant's post office address means under Rule 61 that address at which he customarily receives his mail.

The object of requiring applicant's post office address is to enable the Office to communicate directly with the applicant if desired; hence, the address of the attorney with instructions to send communications to applicant in care of the attorney is not sufficient. (Basis: Order No. 1994.)

If the post office address is entirely omitted it must be supplied by a letter over the applicant's own signature. Where, however, having given complete data as to his residence, the applicant identifies his post office address only by street and number, it is assumed and so accepted, that the city and state of his residence are the city and state of his post office address.

Any amendment of the post office address requires the signature of the applicant himself.

605.04 Applicant's Signature and Name

Rule 57. Signature. The application must be signed by the applicant in person. The signature of the oath will be accepted as the signature to the application provided the oath is attached to and refers to the petition, specification and claim to which it applies. Full names must be given, including the full first name without abbreviation, and the middle initial or name if any.

Rule 76. Signature to the specification. When the oath is attached to and refers to the petition, specifica-