

specified time, the determination whether or not to institute reexamination will be made on the request as it then exists. If the fee for requesting reexamination has not been paid, no determination will be made and the request will be placed in the patent file as a citation if it complies with the requirements of § 1.501(a).

(d) The filing date of the request is:

(1) The date on which the request including the entire fee for requesting reexamination is received in the Patent and Trademark Office; or

(2) The date on which the last portion of the fee for requesting reexamination is received.

(e) A request filed by the patent owner may include a proposed amendment in accordance with § 1.530(d).

(f) If a request is filed by an attorney or agent identifying another party on whose behalf the request is being filed, the attorney or agent must have a power of attorney from that party or be acting in a representative capacity pursuant to § 1.34(a).

(35 U.S.C. 6; 15 U.S.C. 1113, 1123)

[46 FR 29185, May 29, 1981, as amended at 47 FR 41282, Sept. 17, 1982; 62 FR 53200, Oct. 10, 1997]

§ 1.515 Determination of the request for reexamination.

(a) Within three months following the filing date of a request for reexamination, an examiner will consider the request and determine whether or not a substantial new question of patentability affecting any claim of the patent is raised by the request and the prior art cited therein, with or without consideration of other patents or printed publications. The examiner's determination will be based on the claims in effect at the time of the determination and will become a part of the official file of the patent and will be given or mailed to the patent owner at the address as provided for in § 1.33(c) and to the person requesting reexamination.

(b) Where no substantial new question of patentability has been found, a refund of a portion of the fee for requesting reexamination will be made to the requester in accordance with § 1.26(c).

(c) The requester may seek review by a petition to the Commissioner under § 1.181 within one month of the mailing date of the examiner's determination refusing reexamination. Any such petition must comply with § 1.181(b). If no petition is timely filed or if the decision on petition affirms that no substantial new question of patentability has been raised, the determination shall be final and nonappealable.

§ 1.520 Reexamination at the initiative of the Commissioner.

The Commissioner, at any time during the period of enforceability of a patent, may determine whether or not a substantial new question of patentability is raised by patents or printed publications which have been discovered by the Commissioner or which have been brought to the Commissioner's attention even though no request for reexamination has been filed in accordance with § 1.510. The Commissioner may initiate reexamination without a request for reexamination pursuant to § 1.510. Normally requests from outside the Patent and Trademark Office that the Commissioner undertake reexamination on his own initiative will not be considered. Any determination to initiate reexamination under this section will become a part of the official file of the patent and will be given or mailed to the patent owner at the address as provided for in § 1.33(c).

REEXAMINATION

§ 1.525 Order to reexamine.

(a) If a substantial new question of patentability is found pursuant to § 1.515 or § 1.520, the determination will include an order for reexamination of the patent for resolution of the question. If the order for reexamination resulted from a petition pursuant to § 1.515(c), the reexamination will ordinarily be conducted by an examiner other than the examiner responsible for the initial determination under § 1.515(a).

(b) If the order for reexamination of the patent mailed to the patent owner at the address as provided for in