

§41.7

(b) *Record of proceeding.* (1) The record of a Board proceeding is available to the public unless a patent application not otherwise available to the public is involved.

(2) Notwithstanding paragraph (b)(1) of this section, after a final Board action in or judgment in a Board proceeding, the record of the Board proceeding will be made available to the public if any involved file is or becomes open to the public under §1.11 of this title or an involved application is or becomes published under §§1.211 to 1.221 of this title.

§41.7 Management of the record.

(a) The Board may expunge any paper directed to a Board proceeding, or filed while an application or patent is under the jurisdiction of the Board, that is not authorized under this part or in a Board order, or that is filed contrary to a Board order.

(b) A party may not file a paper previously filed in the same Board proceeding, not even as an exhibit or appendix, without Board authorization or as required by rule.

§41.8 Mandatory notices.

(a) In an appeal brief (§§41.37, 41.67, or 41.68) or at the initiation of a contested case (§41.101), and within 20 days of any change during the proceeding, a party must identify:

(1) Its real party-in-interest, and

(2) Each judicial or administrative proceeding that could affect, or be affected by, the Board proceeding.

(b) For contested cases, a party seeking judicial review of a Board proceeding must file a notice with the Board of the judicial review within 20 days of the filing of the complaint or the notice of appeal. The notice to the Board must include a copy of the complaint or notice of appeal. See also §§1.301 to 1.304 of this title.

§41.9 Action by owner.

(a) *Entire interest.* An owner of the entire interest in an application or patent involved in a Board proceeding may act in the proceeding to the exclusion of the inventor (see §§3.71 and 3.73 of this title).

(b) *Part interest.* An owner of a part interest in an application or patent in-

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volved in a Board proceeding may petition to act in the proceeding to the exclusion of an inventor or a co-owner. The petition must show the inability or refusal of an inventor or co-owner to prosecute the proceeding or other cause why it is in the interest of justice to permit the owner of a part interest to act in the proceeding. An order granting the petition may set conditions on the actions of the parties during the proceeding.

[69 FR 50003, Aug. 12, 2004, as amended at 77 FR 48826, Aug. 14, 2012]

§41.10 Correspondence addresses.

Except as the Board may otherwise direct,

(a) *Appeals.* Correspondence in an application or a patent involved in an appeal (subparts B and C of this part) during the period beginning when an appeal docketing notice is issued and ending when a decision has been rendered by the Board, as well as any request for rehearing of a decision by the Board, shall be mailed to: Patent Trial and Appeal Board, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450. Notices of appeal, appeal briefs, reply briefs, requests for oral hearing, as well as all other correspondence in an application or a patent involved in an appeal to the Board for which an address is not otherwise specified, should be addressed as set out in §1.1(a)(1)(i) of this title.

(b) *Interferences.* Mailed correspondence in interference (subpart D of this part) shall be sent to Mail Stop INTERFERENCE, Patent Trial and Appeal Board, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

(c) *Trial Proceedings.* Correspondence in trial proceedings (part 42 of this title) are governed by §42.6(b) of this title.

[77 FR 46630, Aug. 6, 2012]

§41.11 *Ex Parte* communications in *inter partes* proceedings.

An *ex parte* communication about an *inter partes* reexamination (subpart C of this part) or about a contested case (subparts D and E of this part) with a

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Board member, or with a Board employee assigned to the proceeding, is not permitted.

By a micro entity (§1.29)	\$500.00
By a small entity (§1.27(a))	1,000.00
By other than a small or micro entity	2,000.00

§41.12 Citation of authority.

(a) For any United States Supreme Court decision, citation to the United States Reports is preferred.

(b) For any decision other than a United States Supreme Court decision, citation to the West Reporter System is preferred.

(c) Citations to authority must include pinpoint citations whenever a specific holding or portion of an authority is invoked.

(d) Non-binding authority should be used sparingly. If the authority is not an authority of the Office and is not reproduced in the United States Reports or the West Reporter System, a copy of the authority should be provided.

[78 FR 4290, Jan. 18, 2013]

Subpart B—Ex Parte Appeals

§41.30 Definitions.

In addition to the definitions in §41.2, the following definitions apply to proceedings under this subpart unless otherwise clear from the context:

Applicant means either the applicant in a national application for a patent or the applicant in an application for reissue of a patent.

Evidence means something (including testimony, documents and tangible objects) that tends to prove or disprove the existence of an alleged fact, except that for the purpose of this subpart *Evidence* does not include dictionaries, which may be cited before the Board.

Owner means the owner of the patent undergoing *ex parte* reexamination under §1.510 of this title.

Proceeding means either a national application for a patent, an application for reissue of a patent, an *ex parte* reexamination proceeding, or a trial before the Patent Trial and Appeal Board. Appeal to the Board in an *inter partes* reexamination proceeding is controlled by subpart C of this part.

Record means the items listed in the content listing of the Image File Wrapper of the official file of the application or reexamination proceeding on appeal or the official file of the Office if other than the Image File Wrapper, excluding amendments, Evidence, and other documents that were not entered. In the case of an issued patent being reissued or reexamined, the *Record* further includes the *Record* of the patent being reissued or reexamined.

[69 FR 50003, Aug. 12, 2004, as amended at 76 FR 72296, Nov. 22, 2011; 77 FR 46630, Aug. 6, 2012]

§41.20 Fees.

(a) *Petition fee.* The fee for filing a petition under this part is: \$400.00.

(b) *Appeal fees.* (1) For filing a notice of appeal from the examiner to the Patent Trial and Appeal Board:

By a micro entity (§1.29)	\$200.00
By a small entity (§1.27(a))	400.00
By other than a small or micro entity	800.00

(2)(i) For filing a brief in support of an appeal in an application or *ex parte* reexamination proceeding: \$0.00.

(ii) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal in an *inter partes* reexamination proceeding:

By a micro entity (§1.29)	\$500.00
By a small entity (§1.27(a))	1,000.00
By other than a small or micro entity	2,000.00

(3) For filing a request for an oral hearing before the Board in an appeal under 35 U.S.C. 134:

By a micro entity (§1.29)	\$325.00
By a small entity (§1.27(a))	650.00
By other than a small or micro entity	1,300.00

(4) In addition to the fee for filing a notice of appeal, for forwarding an appeal in an application or *ex parte* reexamination proceeding to the Board:

§41.31 Appeal to Board.

(a) *Who may appeal and how to file an appeal.* An appeal is taken to the Board by filing a notice of appeal.

(1) Every applicant, any of whose claims has been twice rejected, may