

Code of Federal Regulations

Title 37. Patents, Trademarks, and Copyrights

Chapter I. United States Patent and Trademark Office, Department of Commerce ([Refs & Annos](#))

Subchapter A. General

Patents

Part 1. Rules of Practice in Patent Cases ([Refs & Annos](#))

Subpart B. National Processing Provisions

the Application

This section has been updated. Click [here](#) for the updated version.

37 C.F.R. § 1.57

§ 1.57 Incorporation by reference.

Effective: September 16, 2012 to December 17, 2013

<Text of section effective until Dec. 18, 2013.>

(a) Subject to the conditions and requirements of this paragraph, if all or a portion of the specification or drawing(s) is inadvertently omitted from an application, but the application contains a claim under [§ 1.55](#) for priority of a prior-filed foreign application, or a claim under [§ 1.78](#) for the benefit of a prior-filed provisional, nonprovisional, or international application, that was present on the filing date of the application, and the inadvertently omitted portion of the specification or drawing(s) is completely contained in the prior-filed application, the claim under [§ 1.55](#) or [§ 1.78](#) shall also be considered an incorporation by reference of the prior-filed application as to the inadvertently omitted portion of the specification or drawing(s).

(1) The application must be amended to include the inadvertently omitted portion of the specification or drawing(s) within any time period set by the Office, but in no case later than the close of prosecution as defined by [§ 1.114\(b\)](#), or abandonment of the application, whichever occurs earlier. The applicant is also required to:

(i) Supply a copy of the prior-filed application, except where the prior-filed application is an application filed under [35 U.S.C. 111](#);

(ii) Supply an English language translation of any prior-filed application that is in a language other than English; and

(iii) Identify where the inadvertently omitted portion of the specification or drawings can be found in the prior-filed application.

(2) Any amendment to an international application pursuant to this paragraph shall be effective only as to the United States, and shall have no effect on the international filing date of the application. In addition, no request under this section to add the inadvertently omitted portion of the specification or drawings in an international application designating the United States will be acted upon by the Office prior to the entry and commencement of the national stage ([§ 1.491](#)) or the filing of an application under [35 U.S.C. 111\(a\)](#) which claims benefit of the international application. Any omitted portion of the

international application which applicant desires to be effective as to all designated States, subject to PCT Rule 20.8(b), must be submitted in accordance with PCT Rule 20.

(3) If an application is not otherwise entitled to a filing date under § 1.53(b), the amendment must be by way of a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(f).

(b) Except as provided in paragraph (a) of this section, an incorporation by reference must be set forth in the specification and must:

(1) Express a clear intent to incorporate by reference by using the root words “incorporat(e)” and “reference” (e.g., “incorporate by reference”); and

(2) Clearly identify the referenced patent, application, or publication.

(c) “Essential material” may be incorporated by reference, but only by way of an incorporation by reference to a U.S. patent or U.S. patent application publication, which patent or patent application publication does not itself incorporate such essential material by reference. “Essential material” is material that is necessary to:

(1) Provide a written description of the claimed invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and set forth the best mode contemplated by the inventor of carrying out the invention as required by 35 U.S.C. 112(a);

(2) Describe the claimed invention in terms that particularly point out and distinctly claim the invention as required by 35 U.S.C. 112(b); or

(3) Describe the structure, material, or acts that correspond to a claimed means or step for performing a specified function as required by 35 U.S.C. 112(f).

(d) Other material (“Nonessential material”) may be incorporated by reference to U.S. patents, U.S. patent application publications, foreign patents, foreign published applications, prior and concurrently filed commonly owned U.S. applications, or non-patent publications. An incorporation by reference by hyperlink or other form of browser executable code is not permitted.

(e) The examiner may require the applicant to supply a copy of the material incorporated by reference. If the Office requires the applicant to supply a copy of material incorporated by reference, the material must be accompanied by a statement that the copy supplied consists of the same material incorporated by reference in the referencing application.

(f) Any insertion of material incorporated by reference into the specification or drawings of an application must be by way of an amendment to the specification or drawings. Such an amendment must be accompanied by a statement that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter.

(g) An incorporation of material by reference that does not comply with paragraphs (b), (c), or (d) of this section is not effective to incorporate such material unless corrected within any time period set by the Office, but in no case later than the close of prosecution as defined by § 1.114(b), or abandonment of the application, whichever occurs earlier. In addition:

(1) A correction to comply with paragraph (b)(1) of this section is permitted only if the application as filed clearly conveys an intent to incorporate the material by reference. A mere reference to material does not convey an intent to incorporate the material by reference.

(2) A correction to comply with paragraph (b)(2) of this section is only permitted for material that was sufficiently described to uniquely identify the document.

Credits

[[69 FR 56539](#), Sept. 21, 2004; [72 FR 51563](#), Sept. 10, 2007; [77 FR 46624](#), Aug. 6, 2012]

SOURCE: [24 FR 10332](#), Dec. 22, 1959; [60 FR 14518](#), March 17, 1995; [65 FR 14871](#), March 20, 2000; [65 FR 33455](#), May 24, 2000; [65 FR 50103](#), Aug. 16, 2000; [65 FR 56793](#), Sept. 20, 2000; [65 FR 70490](#), Nov. 24, 2000, unless otherwise noted.

AUTHORITY: [35 U.S.C. 2\(b\)\(2\)](#), unless otherwise noted.

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