

REQUEST FOR RECORDS POSITION AUTHORITY		JOB NUMBER NI-241-10-1	
To NATIONAL ARCHIVES & RECORDS ADMINISTRATION 8601 ADELPHI ROAD COLLEGE PARK, MD 20740-6001		Date received 10/2/09	
1 FROM (Agency or establishment) United States Patent and Trademark Office (USPTO)		NOTIFICATION TO AGENCY	
		In accordance with the provisions of 44 U.S.C. 3303a, the disposition request, including amendments, is approved except for items that may be marked "disposition not approved" or "withdrawn" in column 10	
2 MAJOR SUBDIVISION Office of the Chief Information Officer			
3 MINOR SUBDIVISION Program Administration Organization			
4 NAME OF PERSON WITH WHOM TO CONFER Susan K Fawcett Records Officer	5 TELEPHONE NUMBER 571-272-2799	DATE 9/28/09	ARCHIVIST OF THE UNITED STATES 
6 AGENCY CERTIFICATION I hereby certify that I am authorized to act for this agency in matters pertaining to the disposition of its records and that the records proposed for disposal on the attached ___ page(s) are not needed now for the business for this agency or will not be needed after the retention periods specified, and that written concurrence from the General Accounting Office, under the provisions of Title 8 of the GAO Manual for Guidance of Federal Agencies, <input checked="" type="checkbox"/> is not required <input type="checkbox"/> is attached, or <input type="checkbox"/> has been requested			
DATE 9-28-2009	SIGNATURE OF AGENCY REPRESENTATIVE Susan K Fawcett		TITLE USPTO Records Officer
7 ITEM NO	8 DESCRIPTION OF ITEM AND PROPOSED DISPOSITION	9 GRS OR SUPERSEDED JOB CITATION	10 ACTION TAKEN (NARA USE ONLY)
	U S Patent and Trademark Office Patent Granting and Maintenance These records are unique to the Patent Office program at the U S Patent and Trademark Office	see attached	

Patent Granting and Maintenance

This series covers records of the agency Patent business area, both unique administrative and mission-centric.

A patent is the grant of a property right for an invention to the inventor. The United States Patent Trademark Office (USPTO) exists in order to “promote the progress of science and the useful arts by securing for limited times to inventors the exclusive right to their respective discoveries (Article 1, Section 8 of the United States Constitution).

The right conferred by the patent grant is, in the language of the statute and of the grant itself, “the right to exclude others from making, using, offering for sale, or selling” the invention in the United States or “importing” the invention into the United States. What is granted is not the right to make, use, offer for sale, sell or import, but the right to exclude others from making, using, offering for sale, selling or importing the invention. Once a patent is issued, the patentee must enforce the patent without aid of the USPTO.

PERMANENT:

- 1 - Patent Program and Policy Subject Files**
- 2 - Patent Case Files, Granted**

TEMPORARY:

- 3 - Abandoned Patent Applications, Not Referenced in Granted Case File**

- 4 - Pre-Grant Patent Examination Files**

- 4.1 Evidentiary Patent Applications
- 4.2 Patent Examination Working Files (Action Folder)
- 4.3 Patent Examiner Reference Files
- 4.4 Patent Examination Feeder Records
- 4.5 Patent Post-Examination Feeder Records

- 5 - International Patent Files**

- 5.1 Patent Cooperation Treaty (PCT) Applications and Miscellaneous Records
- 5.2 Non-PCT International Files

- 6 - Patent Quality Review Files**

- 6.1 Quality Review System (QRS) Files
- 6.2 Quality Review Subject Files

- 7 - Patent Legal Records**

- 7.1 Petitions to Expunge Assignment Documentation
- 7.2 P-Licenses
- 7.3 Attorney Work Product, Internal Management Files
- 7.4 Patent Legal Correspondence
- 7.5 Selected Application Production and Docket Reports

- 8 - Patent Training, Examination, and Certification Records**

- 8.1 Examinations and Grading Overlays (Patent Corps)
- 8.2 Patent Examiner Personal Test Records
- 8.3 Patent Examiner Certification Records
- 8.4 Patent Training, Presentation and Administrative Files

- 9 - Patent Office General Administrative Records**

- 10 - Patent Office Short-Term Discretionary Records**

- 10.1 - Patent Classification Files
- 10.2 - Scientific Technical Information Center (STIC) Administrative Files
- 10.3 - Patent Administrative & Feeder Records
- 10.4 - PCT Program Administration

PERMANENT:

1 Patent Program and Policy Subject Files

Records of the high-level management, oversight and direction of Patent Office policies procedures, projects and management decisions

Includes records that document studies, reports, memoranda and initiatives which have fundamental evidentiary value to activities impacting the patent system of the United States This includes subject files and executive correspondence of the Commissioner of Patents

These are divided into two retention periods, based upon the public availability of the program documents and the longevity of the policy and program development

A

RETENTION:

Permanent: Close files annually or after superseded; transfer to NARA 20 years after closure or when superseded

B

Permanent: Close files annually or after superseded; transfer to NARA 10 years after closure or when superseded

2 Patent Case Files, Granted

Patent Case Files, Granted are the official agency case files of granted patents. They are also known as the “file wrapper” or “patent file wrapper” and they contain the record of the patent grant. This series also covers official related indices or finding aids. These records are comprised of various actions associated with the examination of a patent application as well as documentation added after grant during the active life of the file. National Stage of International PCT Case Files are included.

RETENTION:

Permanent: Transfer to NARA 40 years after closure

TEMPORARY:

3 Abandoned Patent Applications, Not Referenced in Granted Case File

Abandoned patent applications that are not referenced in a Granted Patent Case File

- Abandonment occurs when the applicant, fails to pay fees or submit documentation requested by the examiner within the allowed time, when claims made for the invention are not patentable or were previously patented, or when another applicant has filed an application for the same invention and can demonstrate an earlier date for the conception of the invention
- Applications retained because they are referred to in another application that was granted are disposed of with the patent case file in which it is cited

Appraisal notes {MPEP 203.05 defines an abandoned application as, "*inter alia*", one which is removed from the Office docket of pending applications

(A) through formal abandonment by the applicant (acquiesced in by the assignee if there is one) or by the attorney or agent of record,

(B) through failure of applicant to take appropriate action at some stage in the prosecution of a nonprovisional application,

(C) for failure to pay the issue fee (MPEP * § 711 to § 711.05), or

(D) in the case of a provisional application, no later than 12 months after the filing date of the provisional application (see MPEP § 711.03(c) and 35 U.S.C. 111 (b) (5)) "

MPEP 2127 further states that "An abandoned patent application may become evidence of prior art only when it has been appropriately disclosed, as, for example, when the abandoned patent [application] is reference[d] in the disclosure of another patent, in a publication, or by voluntary disclosure under [former Defensive Publication rule] 37 CFR 1.139 "

Also may include Patent Applications submitted under Secrecy Orders as well as National Stage of International PCT Case Files

RETENTION:

Temporary: Destroy or delete after 50 years or after final determination of non-reference whichever is later.

4 Pre-Grant Patent Examination Files

Includes all patent application-related records generated during the pre-grant processing period. This includes but is not limited to Prior Art information, Pre-Examination records, and prosecution actions which precede the Granting of a Patent

4.1 Evidentiary Patent Applications

Patent applications as received, and maintained in their native format. This includes electronic forms where the prosecution activities require a change of the native format. These are records held by the agency at its discretion, for evidence of original filing document in the format received. This also covers Provisional Patent Applications

RETENTION:

Temporary: Destroy or delete after 50 years after receipt, or when no longer needed provisional or evidentiary activities, whichever is sooner

4.2 Patent Examination Working Files

Includes records of office actions and prosecution which consist of draft examiner work in progress, and working files that are the basis for and feeder to the final Official Patent Case File. Includes items such as examiner notes, research results from various internal and external sources, correspondence, and published patents. Includes collaborative sessions internal and external involved in the examination process. After patent abandonment or allowance, the working files are no longer needed for agency examination activities

RETENTION:

Temporary: Destroy or delete 6 months after the authorized SPE final action (grant or abandonment) is made, or for maintenance and reissues, after the official record of action is placed in the official patent case file

The Working Folder is specific to an application, and is expected to contain marked up/annotated versions of content the patent examiner finds useful for examination purposes. The sources could include any electronic content including scanned documents or downloads from the internet or internal data bases, (standard feeder record sources). The Collection Folder is expected to be a way to keep reference materials in an easily accessible location, and it would be linked to a user and not a specific application. An Action Folder would contain materials in the Application folder that are in need of action by the Office. The content could be linked to the Action or Working folder

4.3 Patent Examiner Reference Files

Versions of content the patent examiner finds used for examination purposes. The sources include any content including scanned documents or downloads from the internet. Could also include paper or other reference materials. These reference files are linked to a user and not a specific application. Content can be linked to pre-grant content but is used as a Patent Examiners individual reference file (Appraisal note New series – these had previously been in scheduled in part as copies of the Examiner Search Files, in part)

RETENTION:**Temporary: Destroy when no longer needed****4.4 Patent Examination Feeder Records**

Records, content or artifacts used in the patent examination process to create, update, or modify other records when those records are covered by a NARA-approved schedule. Includes system data that is extracted and loaded or included into another system or file.

RETENTION:**Temporary: Destroy when no longer needed****4.5 Patent Post-Examination Feeder Records**

Records which are added to a patent case file after the examination has concluded. Includes, but is not limited to, records of Statutory Invention Registrations, Re-Issues, Patent Term Extension Petition Files and petitions such as petitions to the Director of the USPTO for the extension or adjustment of patent term under the appropriate statute and regulations. May include public copies of petitions and follow-on correspondence and decisions.

NOTE Official copies (images of original requests, follow-on correspondence, and decisions) are placed in the Patent Case File.

RETENTION:**Temporary: Destroy after confirmation that file has been added to the Granted Patent Case File**

5 International Patent Files

Records generated and received by the USPTO as part of the World Intellectual Property Organization (WIPO) process of foreign patent application granting. Includes Patent prosecution-related international files that are not specific to the PCT, administrative files and files for international patent liaison activities (note U.S. National Stage of International PCT Case Files, as well as any related index or finding aids for the case files used for examination of applications filed under 35 U.S.C. 371. Official records showing the prosecution of the PCT applications for, and the granting of, a Patent Documents include records of PCT intake, exchange documentation, examination, prosecution, assignment, registration and post-examination activity that constitute the record of a case file (These are covered by items 2 and 3 in this schedule)

5.1 Patent Cooperation Treaty (PCT) Applications and Miscellaneous Records

PCT international applications received from applicants or from foreign receiving offices and related records generated from filing, search, publication, and preliminary examination prior to an international application entering a formal national phase PCT prosecution. These records include the Home Copy, Search Copy and Examination Copy. Also includes International Exchange Agreement Files (Note regarding records covered by items 2 and 3 in this schedule: U.S. National Stage of International PCT Case Files, as well as any related index or finding aids for the case files used for examination of applications filed under 35 U.S.C. 371. Official records showing the prosecution of the PCT applications for, and the granting of, a Patent Documents including records of PCT intake, exchange documentation, examination prosecution, assignment, registration and post-examination activity that constitute the record of a case file.)

RETENTION:

Temporary: Destroy when 20 years old

5.2 Non-PCT International files

Patent prosecution-related International Files that are not specific to the PCT

RETENTION:

Temporary: Destroy when no longer needed for reference

6 Patent Quality Review Files

Files generated to improve the efficiency of the management mandated quality reviews. Mandated quality reviews include General Schedule 12 reviews, new examiner reviews, technical support staff reviews as well as Patent Cooperation Treaty (PCT) reviews along with allowed and In-Process Review (IPR) reviews already done for every examiner. (See MPEP). The system is accessed by the Office of the Commissioner, Technical Centers (TCs), and the Office of Patent Quality Assurance (OPQA). Various offices generate reports on reviews that are completed and on-going.

6.1 Quality Review System (QRS) Files (NEW)

The QRS Files are used to perform management mandated quality reviews, including General Schedule 12 reviews, new examiner reviews, technical support staff reviews, PCT reviews, and in-process reviews of patent examiners. The OPQA accesses the system to generate reports on reviews that are completed and on-going.

RETENTION:

Temporary: Destroy when 7 years old

6.2 Quality Review Subject Files

Subject files containing record copy of correspondence, reports, meetings, conferences and informational material used as a resource for the office.

RETENTION:

Temporary: Destroy when no longer needed

7 Patent Legal Records

These are records of attorneys, Legal Advisors and their staff, concerning Office practice and procedures associated with patent law, rules and policy implementation. Includes legal advice and records of Petitions not covered elsewhere in the schedule.

7.1 Petitions to Expunge Assignment Documentation (NEW)

These are petitions associated with Patent assignment records. Assignment records serve as a library of references used to establish ownership rights in an application or patent. These petition decisions are not part of the assignment files, but are retained by the Office of Petitions. They are retained the life of the associated application or patent.

RETENTION:

Temporary: Destroy when 40 years old

7.2 P-Licenses

Petitions to the Director for license to file applications for patents in foreign countries. Petitions from inventors who have filed a national patent application are filed with their application. Those without national applications are filed by P-number. Includes index or electronic database to P-Licenses. Records include group number, filing date, serial number (P-number), applicant, invention, date of license if granted, examiner, old, and government agencies contacted. Filed by date. Used to find P-number necessary to recall files from storage.

RETENTION:

Temporary: Destroy when 25 years old

7.3 Attorney Work Product, Internal Management Files (NEW)

Files created and maintained by individual attorneys in the course of their daily work or to complete assignments. Includes reference materials, correspondence, documentation of review of policies, procedures and activities of Patent offices. Includes attorney working files and legal advice files.

RETENTION

Temporary: Destroy when no longer needed

7.4 Patent Legal Correspondence (NEW)

Miscellaneous correspondences, which is administrative in nature and not associated with attorney advice or work product, or is routed to other offices for action.

RETENTION:

Temporary: Destroy when 3 months old

7.5 Selected Application Production and Docket Reports (NEW)

These are similar to, and are intended to mimic, the production and docket reports used in the patent examining corps. The docket report lists the work that an employee must complete and the production report lists the work that an employee did complete in the preceding bi-week. The production report is used in measuring the employee's productivity, which is used as a basis for the employee's performance appraisal and any related awards or disciplinary measures. These should be retained for the same length of time as production and docket report in the examining corps.

RETENTION:

Temporary: Destroy when 4 years old

8 Patent Training, Examination, and Certification Records

Examination and Certification Records associated with Patent employee examinations that allow for certification. Records include test materials, announcements, results, registration and other program materials.

8.1 Examinations and Grading Overlays (Patent Corps)

Examination and grading overlays used in Patent employee examinations that allow for certification.

RETENTION:

Temporary: Destroy when 7 years, 3 months old

8.2 Patent Examiner Personal Test Records

Test answers, sign-up rosters, used examination books, sign in sheets, confidentiality agreements, results notifications.

RETENTION:

Temporary: Destroy 1 year after Examination Administered

8.3 Patent Examiner Certification Records (NEW)

Includes both examiner initial certification and biannual examiner proficiency recertification records.

RETENTION:

Temporary: Destroy 8 months after confirmation of transfer to Examiner OPF

8.4 Patent Training, Presentation and Administrative Files

Presentations used in the Patent Academy and other follow-up training of new and existing Patent Examiners and Senior Patent Examiners (SPEs). Includes all internal active web-based computer-based training (CBT) modules relevant to Patent Examiner training.

RETENTION:

Temporary: Destroy when no longer needed

9 Patent Office General Administrative Records

Subject files, correspondence, periodic reports, certifications memoranda, and reports that document general office administrative management of various Patent programs and projects, and are used primarily for short-term reference, and not contained elsewhere in this schedule. Includes controlled correspondence of the Patent Commissioner, delegations of authorities.

RETENTION:

Temporary: Destroy 4 years after closure date

10 Patent Office Short-Term Discretionary Records

Patent general program specific short-term records. Includes patent examiner search, patent classification, and general patent administrative records used as input feeds to other Patent area records types.

10.1 Patent Classification Files

Records generated in the course of developing schedules and definitions for the technology classes and subclasses that Patent examiners search. Records generated from efforts to identify class subject matter and relevant subclasses, including emerging technologies that are experiencing tremendous growth. Examiners rely heavily on proper, up-to-date classification schedules; thus, the continual advancement of the current classification system as well as the development of new classification schedules is pivotal to quality and pendency goals. Includes records generated that relate to international outreach and outsourcing assistance in the area of patent classification. Classification Data System (CDS) is the system containing Classification Data.

RETENTION:

Temporary: Destroy when no longer needed for reference or USPTO business

10.2 Scientific Technical Information Center (STIC) Administrative Files

Administrative records generated by STIC in the course of assisting examiners with non-patent literature searching. Includes records related to administering search instruction courses, patents search strategy assistance, foreign patents searching, translations, commercial database training, and automated information system (AIS) instruction and support for patents applications including eDAN, OACS, and PFW.

RETENTION:

Temporary: Destroy when 2 years old or when no longer needed for reference or USPTO business, whichever is sooner

10.3 Patent Administrative & Feeder Records

General Patent administrative and automated information system records that provide input for other longer-term USPTO records.

RETENTION:

Temporary: Destroy when no longer needed for reference

10.4 PCT Program Administration

Includes General PCT Short-Term Administrative Records.

RETENTION:

Temporary: Destroy when 3 years old or in accordance with international treaty.

Scheduling Note:

This Flexible Schedule relies upon secondary retention determinations for the majority of “When No Longer Needed” retention periods. When in effect, WNLN will more often than not be a determined time frame based either upon the very detailed Examination Procedures (MPEP) and Rules that govern Patent Granting and Maintenance. In order to obtain a true flexible schedule, there is a need to allow for such flexibility to allow for rule changes or actions that update or alter the examination procedures. For instance, if a certain type of notice of allowance is to be retained in the case file now, but in the future the rules change and require that the office only maintain that record for 2 years, this schedule would allow for such internal procedures to be continually covered by retention schedules that do not interfere or contradict the rule or regulation.