reexamination will be made to the requester in accordance with § 1.26(c).

§ 1.927 Petition to review denial of the request for reexamination.

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.

Reexamination of Patents

§1.929 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 or by the failure of the patent specification or claim(s) to comply with the requirements of 35 U.S.C. 112 except for the best mode requirement. The Commissioner may order reexamination even though no request for reexamination has been filed in accordance with §1.915. Normally requests from outside the Patent and Trademark Office that the Commissioner undertake reexamination on his or her 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).

§1.931 Order to reexamine.

(a) If a substantial new question of patentability is found, the determination will include an order for reexamination of the patent for resolution of the question.

(b) If the order for reexamination resulted from a petition pursuant to \S 1.927, the reexamination will ordinarily be conducted by an examiner other than the examiner responsible for the initial determination under \S 1.923.

Information Disclosure

§1.933 Information material to patentability in reexamination proceedings.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective reexamination occurs

when, at the time a reexamination proceeding is being conducted, the Office is aware of and evaluates the teachings of all information material to patentability in a reexamination proceeding. Each individual associated with the patent owner in a reexamination proceeding has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability in a reexamination proceeding. The individuals who have a duty to disclose to the Office all information known to them to be material to patentability in a reexamination proceeding are the patent owner, each attorney or agent who represents the patent owner, and every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. The duty to disclose the information exists with respect to each claim pending in the reexamination proceeding until the claim is cancelled. Information material to the patentability of a cancelled claim need not be submitted if the information is not material to patentability of any claim remaining under consideration in the reexamination proceeding. The duty to disclose all information known to be material to patentability in a reexamination proceeding is deemed to be satisfied if all information known to be material to patentability of any claim in the patent after issuance of the reexamination certificate was cited by the Office or submitted to the Office in an information disclosure statement. However, the duties of candor, good faith, and disclosure have not been complied with if any fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct by, or on behalf of, the patent owner in the reexamination proceeding. Any information disclosure statement must be filed with the items listed in § 1.98(a) as applied to individuals associated with the patent owner in a reexamination proceeding, and should be filed within two months of the date of the order for reexamination, or as sooner thereafter as possible.

(b) Under this section, information is material to patentability in a reexamination proceeding when it is not cumulative to information of record or being made of record in the reexamination proceeding, and

(1) It is a patent or printed publication that establishes, by itself or in combination with other patents or printed publications, a prima facie case of unpatentability of a claim; or (2) It refutes, or is inconsistent with, a position the patent owner takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability of a claim pending in a reexamination proceeding is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-ofproof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) The responsibility for compliance with this section rests upon the individuals designated in paragraph (a) of this section, and no evaluation will be made by the Office in the reexamination proceeding as to compliance with this section. If questions of compliance with this section are discovered during a reexamination proceeding, they will be noted as unresolved questions in accordance with § 1.906(c).

Office Actions and Responses (Before the Examiner)

§1.935 Initial Office action normally accompanies order to reexamine.

The order for reexamination will normally be accompanied by the initial Office action on the merits of the reexamination.

§1.937 Conduct of Reexamination.

(a) All reexamination proceedings, including any appeals to the Board of Patent Appeals and Interference, will be conducted with special dispatch within the Office, unless the Commissioner makes a determination that there is good cause for suspending the reexamination proceding. A final determination that good cause exists shall not be made until the patent owner and third party requesters (if any) have had a reasonable opportunity to comment on or oppose any suspension.

(b) Except as otherwise provided, the reexamination proceeding will be conducted in accordance with the sections governing the application examination process; §§ 1.104 through 1.119, and will result in the issuance of a reexamination certificate under § 1.997.

§1.939 Unauthorized papers.

Unless authorized by the reexamination regulations (§§ 1.901–