

Appeal to the Board of Patent Appeals and Interferences and to the Courts

If the examiner persists in the rejection of any of the claims in an application, or if the rejection has been made final, the applicant may appeal to the Board of Patent Appeals and Interferences in the United States Patent and Trademark Office. The Board of Patent Appeals and Interferences consists of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, the Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the USPTO, the Commissioner for Patents, and the administrative patent judges, but normally each appeal is heard by only three members. An appeal fee is required and the applicant must file a brief to support his/her position. An oral hearing will be held if requested upon payment of the specified fee.

As an alternative to appeal, in situations where an applicant desires consideration of different claims or further evidence, a request for continued examination (RCE) or a continuation application is often filed. For the requirements for filing an RCE, see 37 CFR 1.114. An RCE is not available in an application for a design patent, but a continuation of a design application may be filed as a Continued Prosecution Application (CPA) under 37 CFR 1.53(d).

If the decision of the Board of Patent Appeals and Interferences is still adverse to the applicant, an appeal may be taken to the Court of Appeals for the Federal Circuit or a civil action may be filed against the Director in the United States District Court for the District of Columbia. The Court of Appeals for the Federal Circuit will review the record made in the Office and may

affirm or reverse the Office's action. In a civil action, the applicant may present testimony in the court, and the court will make a decision.