

In accordance with that order and regulations of the Commissioner (37 CFR 7.1-7.7), this register is not open to public inspection. It is available for examination and inspection by duly authorized representatives of the Government; an exception is made as to those instruments which the department or agency of origin has authorized in writing as available for public examination. In the latter event, the instrument is made available generally.

II. INFORMATION PRESENTLY RESTRICTED FOR OTHER REASONS

A. The Secretary of Commerce by Executive Order 10930 was assigned responsibility for carrying out the functions set forth in Executive Order 10096 as they relate to the overseeing of agency determinations of the rights of the Government and its employees to the property in inventions made by Federal employees. These functions are to be performed by the Commissioner of Patents pursuant to a delegation of authority by the Secretary (Mar. 24, 1961, 26 F.R. 3118).

In the course of these determinations, it may be necessary for the employee-inventor and/or the employing agency to disclose in some detail the subject matter and circumstances of the discovery. This same information is or may become the substantive material in a patent application before the Patent Office (see 37 CFR 300.7) which is to be held in confidence (35 U.S.C. 122, and see item I. A. above).

For the reasons that provide the basis for the direction of 35 U.S.C. 122 relating to confidentiality of patent applications, the same information contained in the documents used in the determinations under Executive Order 10096 should be maintained confidential subject always to the conclusive discretion of the Federal Government and the employee-inventor acting jointly until such time as the right to the property in the discovery is resolved.

The program established by Executive Order 10096 for determination of rights to the property in an invention is not based on a specific statute directed to this end and neither the order nor a statute provides specifically for restricting access to such documents. The documents providing details concerning the discovery of an employee-inventor should, in our opinion, be kept confidential until a patent issues or is refused on the subject matter of the determination. Consistent with the treatment accorded patent applications, such documents have been kept confidential.

B. Section 31 of title 35 of the United States Code authorizes the Commissioner of Patents to prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants before the Patent Office, and to require them to show that they are of good moral character and reputation.

Papers received by the Commissioner in his efforts to carry out this function are held confidential to assure the availability of information and to protect a candidate for recognition to practice against unwarranted invasion of his privacy. These attorneys and agents are not "personnel" of the Office so as to come within the exceptions provided by subsections (c) (2) and (c) (6).

C. In the exercise of his authority to inquire into the qualifications of attorneys and agents to enable them to render valuable service, advice, and assistance (35 U.S.C. 31), in the presentation or prosecution of applications for patents, the Commissioner gives examinations to test these qualifications. By regulation, review of a determination by the Commissioner based on such an examination is available by petition to the Commissioner (37 CFR 1.341 (i)). By provisions of section 32 of title 35 of the United States Code, a person "so refused recognition" because of his failure to attain a passing mark may have recourse to the U.S. District Court for the District of Columbia to determine if the Commissioner had a reasonable basis for his determination. (See Local Civil Rule 95.) Pending such an action before the court, the test papers are preserved in secrecy, a practice accepted by the court (*Cupples v. Marzall, Comr. Pats.*, Jan. 9, 1952; 92 USPQ 169, 171). A contrary practice would be disruptive of the orderly operation of the Patent Office. These attorneys and agents are not "personnel" of the Office so as to come within the exceptions provided by subsections (c) (2) and (c) (6).

D. In the exercise of his authority to suspend or exclude, either generally or in a particular case, from practice before the Patent Office any agent or attorney shown to be incompetent, or guilty of improper conduct (35 U.S.C. 32, and see further 37 CFR 1.348), the Commissioner receives complaints concerning alleged misconduct of agents and attorneys and makes inquiries and investiga-