

previously filed. Under the Paris Convention, the countries may also require that a translation accompany the certified copy of the foreign application. See Questions #1, 2, and 3.

B. Electronic Exchange of Priority Documents

The PTO also requests written public comment on issues associated with the electronic exchange of priority documents between the PTO, EPO, and JPO. Currently, the Trilateral Offices are considering the implementation of procedures that would allow for the direct exchange of priority documents in electronic form between the office of first filing and the offices of subsequent filings. See Question #4. The PTO is interested in how the public views such electronic exchanges of priority documents, including the evidentiary effect of an electronic document constituting the official PTO record of the priority document. See Questions #5 and 6.

It is anticipated that it will be some time before the PTO will have an electronic data base containing the content of applications-as-filed in a word-recognizable format, e.g., applications captured by optical character recognition (OCR). As such, any electronic exchange, at least initially, would be in the form of digital images of the applications-as-filed.

It is contemplated that under a system authorizing the exchange of priority documents, an applicant would have to request that an office forward the priority document directly to another office in electronic form, rather than having the certified copy go to the applicant, who in turn would forward it to the other office. The PTO is also considering providing a return receipt to indicate to the applicant that the request to forward the priority document was received by the PTO and that the PTO has forwarded the priority document to the office(s) designated by the applicant.

The cost to the PTO of processing requests and forwarding priority documents to the designated office(s), and of generating and mailing return receipts, would be recovered through service fees. See Questions #7 and 8. Nevertheless, such a direct exchange of priority documents for a service fee should result in an overall reduction in costs and administrative work for applicants, as well as cost reductions in the conversion from paper to electronic form.

II. Questions

1. (a) Does the requirement that a certified copy of the foreign application be submitted in all cases before the

grant of a patent in order to be entitled to the right of priority serve any useful purpose? If yes, please provide those useful purposes.

(b) Is your answer affected by the fact that such documents may qualify as novelty defeating prior art in other countries?

2. (a) Notwithstanding the existing requirements, when should an applicant be required to submit a certified copy of the foreign application?

(b) Would you continue to submit a certified copy of the foreign application even if not specifically required?

(c) Should any action taken by the U.S. Government be contingent on action in the other Trilateral countries?

3. When the foreign application is not in the English language and an English translation is deemed necessary, should both a certified copy of the foreign application and an English language translation accompanied by a verified statement that the translation is an accurate translation of the certified copy of the foreign application be required, or should only an English language translation of the foreign application accompanied by a verified statement that the translation is accurate be required?

4. What significant problems, either legal or technical, would need to be solved to permit the offices of subsequent filing to receive the priority documents directly from the office of first filing rather than from the applicant?

5. Should the PTO, EPO, and JPO electronically exchange priority documents at the request of applicant? Would most applicants take advantage of this service? What disadvantages, if any, are there in the electronic transmission of priority documents among the PTO, EPO, and JPO?

6. Will the filing of a priority document in electronic form by the office of first filing, rather than in paper form by the applicant, affect the legal admissibility of the priority document?

7. If there was a service fee for the direct exchange of priority documents among the PTO, EPO, and JPO, which was higher than the current fee charged for a certified copy of the application, would most applicants still take advantage of this service? At what fee amount would most applicants choose to request the direct exchange of priority documents?

8. If providing a return receipt resulted in an increase in the service fee for the direct exchange of priority documents among the PTO, EPO, and JPO, would a return receipt be desirable? Against the background that increasing the information provided on

such a return receipt would increase the cost of generating such return receipt, and thus increase the service fee, what information should be included on the return receipt?

Dated: September 8, 1995.

Bruce A. Lehman,

*Assistant Secretary of Commerce and
Commissioner of Patents and Trademarks.*
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COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a distress marker light to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 16, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On June 2, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 F.R. 28781) of proposed addition to the Procurement List. Comments were received from two producers of the distress marker light, one of which is a current contractor with the Government for the light. The contractor stated that the light is a large percentage of its sales, and that losing these sales would have a severe impact on the company and its employees. The contractor claimed that addition of this light to the Procurement List would unreasonably foreclose the contractor from the Government market for strobe marker distress lights, as the Committee has already added the other version the Government buys to the Procurement List. The contractor asked that the Committee not add the light to the Procurement List at least until the current commercial procurement is completed, to allow the contractor to develop a commercial item which would replace the loss of Government sales of the light.

The figures the contractor initially provided to show how the addition would deprive it of a large part of its sales made the assumption that the contractor would receive the contract for the entire requirement for which the Government currently has a solicitation outstanding if the Committee were not to add the light to the Procurement List. The Committee does not consider this assumption to be realistic, because the contractor received less than half of the Government requirements under the most recent procurements, and the contractor has not received a substantial contract for this light since 1992, so it should not be unusually dependent on Government sales of the light.

The contractor subsequently provided other sales information, which indicated that, while the contractor's total sales are considerably less than the forecast the Committee used to estimate impact, the percentage represented by sales of the light to the Government is small enough that its loss is unlikely to have a severe adverse impact on the contractor. Additionally, the contracting activity which buys the light for the Government has indicated that it will complete its current buy before the addition of the light to the Procurement List becomes legally effective. Consequently, the contractor will receive the opportunity it seeks to sell the light to the Government long enough to develop its commercial item.

The other strobe marker distress light was added to the Procurement List in 1973. The commenting contractor was not the contractor for that light at the time; it did not even exist at the time. Consequently, it did not lose sales as a result of the Committee's action.

The other producer of the light is a new company which claimed that it was in line for a contract award for the light earlier this year when the contracting activity cancelled the solicitation, on the basis that the light had been added to the Procurement List, before the producer could obtain a certificate of competency from the Small Business Administration to qualify for the contract award. The producer also objected to the loss of the opportunity to recoup its investment in producing the light.

While the basis for the cancellation of the solicitation was erroneous, as the light was not then on the Procurement List, the contracting activity has informed the Committee that it has subsequently rescinded the cancellation. The contracting activity also informed the Committee that it found the producer nonresponsible, and the producer failed to apply for its certificate of competency within the

required period, so it is not eligible for a contract award. These events occurred before the solicitation was erroneously cancelled. Accordingly, the producer's loss of the contract cannot be attributed to the Committee's action in adding the light to the Procurement List.

Similarly, the producer's loss of the opportunity to recoup its investment was caused by its failure to take an action needed to receive a contract award, not by the Committee's action. While the producer will lose further opportunities to recoup its investment once the light is on the Procurement List, it should be noted that it would risk losing these opportunities even if the light had not been added to the Procurement List because no one is guaranteed a contract under the competitive bidding system.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodity.
3. The action will result in authorizing small entities to furnish the commodity to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Light, Marker, Distress
6230-01-143-4778

This action does not affect current contracts awarded prior to the effective

date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

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Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the procurement list.

SUMMARY: This action adds to the Procurement List an animal trap to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 16, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On July 14, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 36266) of proposed addition to the Procurement List.

Comments were received from the current contractor in response to a Committee request for information. The contractor claimed a common-law patent right in the distinctive features of its trap and threatened to sue anyone who manufactures its trap without its permission.

It is the Committee's understanding that the patent laws of the United States do not recognize a common-law patent right. See 35 U.S.C. 102. The features the contractor claimed—a spring loaded door and wire trap walls—appear in similar traps made by at least two other commercial trap manufacturers. The nonprofit agency which will produce the trap based its design on a Government item description and examination of a trap which was not made by the contractor. Consequently, the Committee believes that the contractor's objections are without foundation, and will not impede the nonprofit agency in furnishing the trap to the Government.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for