

United States Patent and Trademark Office [OG Notices: 23 January 2007](#)

Publication of Opinions of the Board of Patent Appeals and Interferences

The United States Patent and Trademark Office is increasing the transparency of Board of Patent Appeals and Interferences decision making by increasing the number of Board opinions that may be cited. Starting in 2007, the Board will designate opinions and contested case orders as falling into one of three categories: precedential, informative, and routine.

Precedential

Precedential opinions bind subsequent decisions of the Board. The Board currently produces precedential opinions under procedures set forth in Standard Operating Procedure 2 (Revision 6) (<http://www.uspto.gov/web/offices/dcom/bpai/sop2.pdf>). To become precedential, an opinion must be adopted by a majority of the panel, the Chief Administrative Patent Judge, a majority of voting administrative patent judges, and the Director of the United States Patent and Trademark Office. Opinions adopted as precedential appear at:

<http://www.uspto.gov/web/offices/dcom/bpai/prec.htm>.

These decisions are also sent to commercial case reporting services.

Informative

Informative opinions and orders are not binding, but illustrate norms of Board decision-making for the public, the patent examining corps, and future Board panels. Informative opinions and orders may explain best practices, address recurring problems, identify developing areas of the law, exemplify types of decisions under-represented in commercial case reporting services, or report cases of public interest. The Board will establish committees to identify and review opinions and orders for designation as informative. Informative opinions and orders will be sent to commercial case reporting services, circulated within the Board, and sent to the Commissioner for Patents. Informative opinions and orders will also be posted at:

http://www.uspto.gov/web/offices/dcom/bpai/informative_opinions.htm.

Routine

Given the thousands of opinions and orders produced each year at the Board, most opinions and orders will not be designated as precedential or informative. The Board will not send such opinions and orders to commercial case reporting services. All opinions in support of a final decision will be posted at <http://des.uspto.gov/Foia/BPAIReadingRoom.jsp>, however, unless the opinion is subject to confidentiality protections under 35 U.S.C. 122(a) or secrecy under 35 U.S.C. 181. Routine opinions may be cited for whatever persuasive value they may have but, as a general matter, routine opinions should be cited sparingly.

Citing opinions

Cases may be cited either by providing a citation to a commercial case reporting service accessible to the Board (United States Patents Quarterly or Westlaw) or by providing a url for the case from the BPAI Reading Room web site, e.g.:

<http://des.uspto.gov/Foia/RetrievePdf?flNm=fd2006302609-28-2006.pdf>.

The categories announced in this notice should provide the public, the patent examining corps, and the Board itself with a larger body of

authority from which to understand and act on Board decision-making practices. In due course, Standard Operating Procedure 2 will be revised consistent with this notice.

December 27, 2006

MICHAEL R. FLEMING
Chief Administrative Patent Judge