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Mining Patient Application Procedure

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MINING PATENT APPLICATION PROCEDURE

INTRODUCTION

There is no requirement for bringing a valid mining claim to patent, and failure to do so will not deprive a claimant of his exclusive possessory rights to that claim.¹ If application is desired for a patent there is no time limitation imposed within which it must be made. For varying reasons a large number of mining claims never come to patent, but this does not preclude the free trading and developing of such unpatented mining claims.² The reluctance to proceed to patent may stem from such reasons, to mention just a few, as (a) the cost of such proceedings, (b) the possibility of the claim being determined invalid in the course of the proceedings, and (c) the fact that many states do not levy tax assessments on unpatented claims, whereas patented claims are generally subject to taxation. However, it may inure to the advantage of a holder to patent an unpatented claim. By obtaining a patent he eliminates the required annual assessment work.³ In addition, by bringing his claim to patent, one establishes his title with certainty, and obtains surface rights which he otherwise would not have.⁴ This note attempts to set forth the procedure to be followed in applying for a patent.

APPLICATION FOR PATENT

If a valid lode or placer location has been established and the claimant wishes to obtain a patent to that claim,⁵ the applicant must have a correct survey of his claim prepared under the authorization of the cadastral engineer of the appropriate Area Cadastral Engineering Office,⁶ showing accurately the exterior surface boundaries with distant monuments.⁷ This survey must be made prior to the filing of the application for patent. A placer claim requires no further survey if located on surveyed lands and if it conforms to legal subdivision; if located on unsurveyed lands or if it

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1. *Clipper Mining Co. v. Ely Mining & Land Co.*, 194 U.S. 220, 24 S. Ct. 632 (1904).
 2. In 1905 there were approximately 2500 patents issued, and that figure has dwindled to less than 100 in recent years. *Organization and Policy in the Field of Natural Resources: A Rep. with Recommendations*, Prepared for the Commission on Organization of the Executive Branch of the Government, Appendix L, 53-55 (1949).
 3. See, generally, Note, *The Assessment Work Requirements*, supra p. 231.
 4. *U.S. v. Rizzinelli*, 182 F. 675 (Dist. Ct., Idaho, 1910).
 5. *General Mining Regulations*, 19 Fed. Reg. No. 248, at 8995 (Dec. 23, 1954), 43 Code Fed. Regs. Sec. 185.5 (1954). There are two distinct classes of claims: Lode Claims and Placer Claims. These are the only two considered, although patents may be obtained on Mill-sites and Tunnel sites. The application for Mill-sites conforms very closely to the application for Lode or Placer Claims.
 6. *Id.* at 185.38.
 7. *Ibid.* See footnote 14, of this section. In states having no area office, application for survey should be made to the Director of the Bureau of Land Management, Washington, D.C. The area administrator appoints mining surveyors. Each mineral surveyor is eligible to survey mining claims in the States within the region in which he is appointed and in adjoining States. The area administrator shall furnish the area administrator of each adjoining area with copy of the register (names and addresses of mineral surveyors appointed for the area). A mineral claimant may employ any United States mineral surveyor to make a survey of his claim. All expenses of the survey are borne by the mining claimants. *Id.* at 185.49 (a) (b).

does not conform to legal subdivision the survey and plat must be furnished.⁸ The survey obtained for the purpose of location made by the United States mineral surveyor, who is appointed by the area administrator, cannot be substituted for the survey indicated above, as required by the statute.⁹

The survey having been made, the claimant is then required to post at a conspicuous place upon the claim a copy of the plat of survey and notice of his intention to apply for a patent. This notice should include the following particulars:¹⁰

- (1) Date of posting.
- (2) Name of claimant.
- (3) Name of claim.
- (4) Number of the survey.
- (5) Mining district and county.
- (6) Names of adjoining and conflicting claims which are shown on the plat survey.

After posting upon the claim the applicant should file with the proper Manager¹¹ a copy of the plat and field notes of survey, along with a statement of two witnesses showing the plat and notice have been conspicuously posted, giving the date and place of posting. A copy of the posted notice constitutes part of this statement and must accompany it.¹²

At the time the proof of posting is filed, the claimant must file with the same Manager, in duplicate, an application for patent.¹³ The fee payable to the Bureau of Land Management for filing and acting upon an application for patent is \$10, and is to be paid by the applicant at the time of filing.¹⁴ Blank forms of application for mineral patents are not furnished by the Bureau of Land Management. The application must include the following information:¹⁵

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8. *Id.* at 185.69.
 9. *Id.* at 185.39.
 10. *Id.* at 185.51. The importance of this information cannot be taken lightly, since this is the means of obtaining jurisdiction over the case, the same as notice is required to obtain jurisdiction over other types of cases. See, *Stock Oil Co.*, 40 L.D. 198 (1911).
 11. *Id.* at 185.52.
 12. *Ibid.* See, *Tom Moore Consolidated Mining Co. v. Nesmith*, 36 L.D. 199 (1907).
 13. *Id.* at 185.53.
 14. *Id.* at 185.84.
 15. *Id.* at 185.53. *S. F. Mackie*, 5 L.D. 199 (1886). A single application, either for patent or for the survey of a claim, is required where the claim includes several contiguous locations.

Contiguity of claims upon the ground, their common ownership, the availability and value of the common improvements, and the law having been complied with in all other respects, permits the claimant to apply for patent for all the claims together or in smaller groups or individually. Claims which merely corner on one another are not contiguous. It is the location or consolidation of contiguous or adjoining claims, where more than one is involved, that is recognized in the statute as constituting the subject of a single patent proceeding. *William Dawson*, 40 L.D. 17 (1916); Cf. *Bunker Hill Mining and Concentrating Co.*, 45 L.D. 501 (1916); *U.S. v. Bunker Hill and Sullivan Mining and Concentrating Co.*, 48 L.D. 598 (1922); *Hales and Symons*, 51 L.D. 123 (1925).

(1) Information showing that the applicant has possessory rights in his own name, by compliance with the mining laws, customs and other necessary rules and regulations surrounding his right to possession.

(2) A narrative of facts stating his compliance with the mining laws, which shows:

- (a) The origin of his possession.
- (b) Basis of his claim for a patent.

(3) A full description of the kind and character of the vein or lode, or placer, as the case may be.

(4) Whether ore has been extracted, and the amount and value of such extractions as have been made.¹⁶

(5) A statement of each applicant showing that he is a native or naturalized citizen, when and where born, and his residence. Applicants who have declared their intention to become a citizen or have been naturalized, must show the date, place, and court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.¹⁷

(6) All applications subsequent to August 1, 1946, must render information regarding the claimant's participation in Atomic bomb projects, the nature of that participation and whether, as a result of that participation, the applicant acquired any confidential, official information as to the location and existence of fissionable source materials.

With respect to applications based on placer locations, an accurate description of all known lodes situated in the boundaries of the claim must be given in the application.¹⁸ If the existence of the vein or lode is not known, and that fact must be supported by the statement of two or more witnesses, at the time application is made for a placer, the issuance of the patent will convey all minerals and deposits, including the veins or lodes upon the claim.¹⁹ The omission of known veins or lodes in the application for a placer is construed as being conclusive that the applicant has no possessory rights therein, at the date of application.²⁰ Applications must

16. *Id.* at 185.71. In addition to recitals necessary for vein or lode applications, the placer application should contain information pointing to mineral deposit not in vein or lode, the yield per pan or acre of placer gold, the distance to bedrock, formation and extent of deposit. If the material is in the nature of building stone or other deposit than gold there must be a description of the kind, nature and extent of the deposit, giving reasons why the mineral is valuable to the applicant. Natural features must also be described, giving a description of streams, if any, and the amount of water carried and falling within the claim. Timber and vegetation must be stated as to kind and amount and its adaptability to mining or other uses.

17. *Id.* at 185.74. See, 185.73, citizenship of corporations. A certified copy of its charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the statement of their duly authorized agent, made from his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This statement must be accompanied by a power of attorney from the parties, authorizing the person who makes the citizenship for the purpose of application for patent.

18. *Id.* at 185.72.

19. Rev. Stat. Sec. 2333 (1872), 30 U.S.C. Sec. 37 (1946). *Id.* at 185.72.

20. *Id.* at 30 U.S.C. Sec. 37; and 185.74. *South Butte Mining Co. v. Thomas et al.*, 48 L.D. 521 (1922).

contain statements, as well as the published and posted notices, of all known veins or lodes lying within the placer which are owned by other parties or by the applicant himself; but, whether the veins or lodes are claimed or excluded, they must be particularly described on the plat and field notes in such a manner as to delimit the lode and placer claims.²¹

The application must be supported by either a certificate of title²² or an abstract of title certified to by the legal custodian of the records²³ or by an abstractor of titles.²⁴ Each certificate or abstract must be accompanied by a single copy of each location notice, with amendments, certified to be the legal custodian thereof. The abstract or certificate must be certified to as reflecting the records as of a date reasonably near the application date and supplemented as soon as practicable so as to reflect all entries prior to the date of application.²⁵ It is possible to receive secondary evidence of possessory rights if pertinent mining records have been destroyed by fire, or otherwise lost.²⁶

The claimant relying on a lode claim is required to file with the Manager at the time of application, or sometime during the publication period, described below, a certificate of the cadastral engineer that \$500 worth of labor has been expended or improvements made by the applicant or his predecessor in title²⁷ on each location.²⁸ The cadastral engineer must

21. *Id.* at 185.72. This is important to the patentee since unspecified lodes within his placer are subject to claim by other applicants. The lode claim may be adversely by the placer applicant, but the problem could originally be avoided. *Accord. Robinson v. Roydor*, 1 L.D. 564 (1883). But see, *War Dance v. Church Placer*, 1 L.D. 549 (1883), where opposite result was reached because the lode was unknown until 15 months after the date of entry.
22. *Id.* at 185.54 (b). A certificate of title must conform substantially to form 4-1246.
23. Wyo. Comp. Stat. 1945 Sec. 27-711. "All instruments affecting real estate, left for record or filed in the county clerk's office shall be abstracted as soon as practicable, in order of time."
Wyo. Comp. Stat. 1945 Sec. 27-724. "The county clerk shall collect and turn into the county treasurer the following fees: . . . ; for furnishing abstract with certificate and seal, with five (5) conveyances or less, one dollar and fifty cents (\$1.50), and for each additional conveyance ten cents (10¢)."
24. 43 Code Fed. Regs. op. cit. supra, note 22, 185.54 (d). A certificate to an abstract of title must state that the abstract is a full, true, and complete abstract of the location certificates or notices, and all amendments thereof, and of all deeds, instruments, or actions appearing of record purporting to convey or to affect the title to each claim.
25. *Id.* at 185.54 (e). Publication will not be permitted until satisfactory title is established. *Daniel Cameron et al.*, 4 L.D. 515 (1886), does not require literal effect to be given to this provision, since it is only necessary to provide the government with "reasonable assurance of the applicant's right of possession, and not to vex him by unnecessary expense and delay."
26. *Id.* at 185.55. Under the proposed rules, 43 Code Fed. Regs. 186.4, 20 Fed. Reg. 1402 (March 9, 1955), for the implementation of the Multiple Mineral Development Statute (See, *Bloomenthal*, supra, p. 139) the applicant will have to file a copy of the notice required by that statute to be posted on the claim and a statement that the notice was duly posted in accordance with the requirements of the statute. Unless the abstract or certificate of title reflects this information the applicant will also have to file with his application a certified copy of each instrument required by that statute to be recorded in order to entitle him to the benefit thereof.
27. *Id.* at 185.43 (c). Improvements made by a former locator who has abandoned his claim can not be included in the estimate, but should be described and located in the notes and plat.
28. *Id.* at 185.42. The certificate of the office cadastral engineer must show \$500 worth of labor has been expended or improvements made if the application embraces

also certify that the plat filed is correct; that the field notes of survey provide an accurate description,²⁹ by reference to "natural objects" or "permanent monuments," so as to make permanent the location and provide an accurate description of the claim to be incorporated into the patent.³⁰ The cadastral engineer can obtain information concerning the value of labor and improvements from the mineral surveyor's report who made the survey.³¹

In the case of placer claims the proof of \$500 of improvements is not made by the filing of a certificate of the cadastral engineer, but consists of the statement filed in duplicate of two or more disinterested witnesses corroborating the information set forth in the application.³²

When the application is sufficient in all other respects the Manager will publish the notice of application for a period of 60 days in a newspaper nearest to the claim, and will post a copy of the notice in his office for the same period of time.³³ The published notice should contain all of the data posted on the claim and indicate the locus of the claim by showing the connecting line between a corner of the claim and a United States mineral monument, or a corner of the public survey, and, then, the boundaries of the claim by courses and distance.³⁴ After the publication period a sworn statement must be furnished by the claimant, from the office of publication, that notice appeared for 60 days, giving the respective dates.³⁵

The Manager may, after the foregoing statements have been filed, permit the applicant to pay for the land he is entitled to, at the rate of \$5.00 per acre for lode claims or a fractional part thereof,³⁶ and \$2.50 an

several contiguous locations held in common, that an amount equal to \$500 for each location has been so expended upon and for the benefit of, the entire group.

29. Rev. Stat. Sec. 2325 (1880), 30 U.S.C. 29 (1946). *Id.* at 185.42.

30. *Ibid.*

31. *Id.* at 185.43. See Note, *The Assessment Work Requirements*, *supra* p. 231, as to what constitutes allowable improvements and labor.

32. *Id.* at 185.70. See, *Id.* at 185.71 (d). "Inasmuch as in case of claims taken by legal subdivision, no report by a mineral surveyor is required, the claimant, in his application in addition to the data above required, should describe in detail the shafts, cuts, tunnels or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys."

33. 30 U.S.C. *op. cit. supra*, note 29, Sec. 29. *Id.* at 185.56. If the notice is published in a daily paper it shall appear in the Wednesday issue for nine consecutive weeks; if a weekly, in nine consecutive issues; if a semi-weekly or tri-weekly, it shall appear the same day of each week for nine consecutive weeks. In all cases the first day of issue shall be excluded in estimating the period of 60 days.

J.C.S. Mining Co., 41 L.D. 369 (1912), since proper notice establishes jurisdiction, the failure to comply is grounds for cancelling entry. 43 Code Fed. Regs. *op. cit.* 185.56, the claimant must bear expense of publication and furnish an agreement from the publisher showing he (claimant) will stand liable for the charges of publication.

34. *Id.* at 185.59. This information is shown by the field notes and plat. *Jano and other Lode Claims*, 37 L.D. 365 (1908), Held, essential matters of description and failure to designate with sufficient accuracy the locus of the claim upon the ground renders it fatally defective.

35. 30 U.S.C. *op. cit. supra*, note 33, Sec. 29; 43 Code Fed. Regs. *op. cit. supra*, note 36, 185.59 See, *Tom Moore Consolidated Mining Co.*, *op. cit. supra*, note 14, at 199, the statute requires that the copy and the notice should be "in a conspicuous place on the land," and this has been construed to mean "prominently, openly and conveniently to the public." *Accord*, *Equity Mining and Investment Co.*, 43 L.D. 396 (1914), where notice was posted 800 feet outside of the claims, lacking "substantial compliance" with provisions of the statute.

36. 43 Code Fed. Regs. *op. cit. supra*, note 34, 185.60.

acre or fractional part thereof for placer claims.³⁷ The Manager will not, however, accept payment if an adverse claim has been filed or if other objection to the issuance of patent appears.

The claimant must also file a statement of all fees and charges he has paid for publication and survey, as well as all fees and money paid to the Manager of the land office.³⁸ If no adverse claim has been filed and if the proof is found regular the Manager will issue a Certificate of Entry and forward the complete record to the Director of the Bureau of Land Management, Washington, D.C.³⁹ The patent is issued if the application is found regular by the Office of the Director.

There must be a diligent effort to prosecute the patent to finality by making payment, supplying proofs where required, and otherwise fulfilling the necessary requirements. The failure to do so, within a reasonable time after expiration of the publication period or after a favorable determination in the courts of any adverse proceedings, constitutes a waiver of all rights obtained by the applicant as a result of all previous proceedings.⁴⁰ If, however, the applicant can show that entry was not within the same year as publication because of some good reason shown by the local officer, and if there was no intervening adverse claim, then entry cannot be cancelled upon one protesting the relocation of the land.⁴¹

There has been some criticism as to the inordinate delay involved in the issuance of patent, and it has been suggested that modern procedure would shorten the period of time required for issuance.⁴²

ADVERSE CLAIMS

As noted previously an application for patent requires publication of notice for a sixty day period. All adverse claims must be filed within this 60 day period; failure to do so creates a conclusive presumption that there are no adverse claimants.⁴³ Adverse claims must be filed with the Manager where the patent application is filed, or with the Manager of the district in which the land is situated.⁴⁴

The adverse claimant must show the nature and extent of his adverse claim.⁴⁵ Specifically he must show whether he is claiming as a purchaser

37. Id. at 185.69 (b).

38. Id. at 185.60.

39. Id. at 185.62, footnote 19, of this section. A certificate of entry may issue even through a protest has been filed, and patent will be withheld by the Bureau pending a report by the authorized officer upon the bona fides of the claim.

40. Id. at 185.63.

41. L. L. Squires et al., 40 L.D. 542 (1912).

42. Report Bureau of Land Management, Patents, 7 (Survey Team, Dept. of Int. Survey Report, 1953).

43. 43 Code Fed. Regs. op. cit. supra, note 40, 185.78.

44. 30 U.S.C. op. cit. supra, note 35, Sec. 29; Id. at 185.80. See, *Bridges v. The Canyon Siding Mining Co.*, 47 L.D. (1919), the expression in the statute, "It shall be assumed" is construed to mean "conclusively assumed," and failure to adverse deprives the adverse claimant of all remedies except those which a court of equity might allow against a judgment at law.

45. Rev. Stat. Sec. 2326 (1876), 30 U.S.C. Sec. 30 (1946); 43 Code Fed. Regs. op. cit. supra, note 46, 185.79. There may, however, be a protest or a contest. See, *infra* at notes 69 to 76.

or as a locator.⁴⁶ If he claims as a purchaser he must supply the following information:⁴⁷

- (1) A certified copy of the original location.
- (2) A certified copy of the original conveyance.
- (3) An abstract of title from the proper recorder.
- (4) Or, if the transaction was verbal, he must show and have attested by one or more witnesses the circumstances surrounding the purchase including the date and the amount paid.

If he claims as a locator he must file a certified copy of the location from the proper recorder.⁴⁸

The boundaries and extent of the claim must be shown by the adverse claimant by the use of a proper description,⁴⁹ and by filing a plat showing his entire claim and how it particularly conflicts. If the claim and the adverse claim are described by legal subdivision the description is sufficient, but if a plat is relied on the plat should be made from the actual survey of the mineral surveyor who will certify to its official correctness.⁵⁰ In the event an adverse claim is filed, all further patent proceedings are stayed except for the publication of notice and the affidavits thereon, and the controversy is removed to a court of competent jurisdiction, which is usually a state court.⁵¹

This type of controversy relates only to rival or adverse claims, and is concerned only with the question of the right of possession. The courts are not authorized to pass on the character of the land, a matter exclusively dealt with by the Department of Interior.⁵²

Within 30 days after filing an adverse claim with the Manager, proceedings must be instituted by the adverse claimant in a court of competent jurisdiction seeking a determination of the adverse claimant's right to possession. Failure to do so will constitute a waiver of the adverse claim, and the patent proceedings will no longer be stayed.⁵³

If there is an objection to the adverse claim not being brought within the prescribed statutory time, the proper plea should be, depending upon the rules of procedure of the particular jurisdiction, in the nature of a plea

46. *Id.* at 185.79 (a).

47. *Ibid.*

48. *Ibid.*

49. *Id.* at 185.79 (b).

50. *Ibid.*

51. 30 U.S.C. op. cit. supra, note 45, Sec. 30. *U.S. v. Al Sarena Mines, Inc.*, A-26248 (1954); *Madison Placer Claim*, 35 L.D. 551 (1907); *Henry C. Bolyard et al.*, 53 L.D. 556 (1931); *Blanche C. Crane et al.*, 56 L.D. 40 (1936); *Randsburg Silver Mining Co. v. California-Rand Silver, Inc.*, 49 L.D. 525 (1923).

52. See, *Lane v. Cameron*, 46 L.D. 195, 45 App. D.C. 404 (1916); *Grand Canyon Ry. Co. v. Cameron*, 35 L.D. 495 (1907); *US. George B. Conway, Intervener v. Grosso*, 53 L.D. 115 (1930). The character of the land is dealt with in *Protests*, and does not come within the meaning of the statute (30 U.S.C. 30).

53. 30 U.S.C. op. cit. supra, note 51, Sec. 30; 43 Code Fed. Regs. op. cit. supra, note 50, 185.80. See, *Madison Placer*, op. cit. supra, note 51, at 551, where the statute has been construed as mandatory.

in abatement. The question of time is determined conclusively by the court and is not subject to review by either the Department or as a federal question in the Federal courts.⁵⁴

In the event the judgment by the court upon the adverse claim is not in favor of either the applicant or the adverse claimant, such determination conclusively terminates the patent proceedings, entitling neither to proceed on to patent until his possessory rights have been perfected.⁵⁵ Both parties in the adverse proceedings are for many purposes in the position of plaintiffs, and the applicant cannot *ipso facto* go forward in the land office simply because the adverse claimant has failed to make out his case, if the applicant has also failed.⁵⁶ A judgment entered on a general verdict indicating a right of possession in the successful party is not sufficient in itself without a showing of facts surrounding the right of possession, such as prior appropriation, compliance with the law, citizenship of the party, discovery of minerals, etc.⁵⁷

While adverse proceedings are pending the Department will not entertain a contest or protest⁵⁸ against both litigants on the ground that neither had a right to patent for failure to comply with some essential requirement of the mining laws. However, it is conceivable that the protesting party might be permitted to intervene in the pending adverse proceedings.⁵⁹ However, inasmuch as contests and protests⁶⁰ involve, among other things, questions relating to the mineral or nonmineral character of the land, any determination on that issue would be considered only advisory and not binding upon the Department of Interior.⁶¹

The successful party in the adverse proceedings must file a certified copy of the judgment roll with the Manager before his entry is allowed. The judgment from the adverse suit may show that both parties are entitled to "separate and different portions of the claim," in which event they both file the proper certificate, pay the proper fees, and patents will be issued in accordance with their respective interests.⁶² The certificate of the clerk of court, under seal of the court, shall show the facts in the case are in accord with the record; that the judgment is final, that the time for appeal has expired, or that the right to appeal has been waived.⁶³ If the adverse suit is dismissed a certified copy of the dismissal is sufficient,⁶⁴ but if the suit is once commenced proof of abandonment will not be accepted,

54. Gypsum Placer Claim, 37 L.D. 484 (1909).

55. Brien v. Moffitt et al., 35 L.D. 32 (1906).

56. U.S., George B. Conway, Intervener v. Grosso, op. cit. supra, note 52, at 121.

57. Thomas v. Chisholm, 13 Colo. 105, 21 P. 1019 (1889); Craig v. Thompson, 10 Colo. 517, 16 P. 24 (1887); McCaig v. Bryan, 10 Colo. 309, 15 P. 413 (1887).

58. See, Contests, infra, p. 249.

59. Randsburg Silver Mining Co. v. California Rand Silver, Inc. et al., op. cit. supra, note 51, at 525.

60. See, Protests, infra, p. 249.

61. U.S., George B. Conway, Intervener v. Grosso, op. cit. supra, note 52, at 121.

62. 30 U.S.C. op. cit. supra, note 53, Sec. 30.

63. 43 Code Fed. Regs. op. cit. supra, note 53, 185.82 (a).

64. Id. at 185.82 (b).

as it must be carried through to final judgment or formal dismissal.⁶⁵ If the adverse claimant fails to file suit within the thirty day statutory period, a certificate to that effect is required by the clerk of the State Court having jurisdiction in the case, as well as the clerk of the United States District Court for the district in which the claim is situated.⁶⁶

CONSIDERATION OF APPLICATION⁶⁷

When the Bureau of Land Management receives the complete record, it is referred to a law examiner in the mineral division, who studies the application and accompanying data with a view to determining the right of the applicant to a patent. The law examiner first ascertains from office records whether the land is available for patent, whether the land has been withdrawn from entry, or whether there are conflicting claims, either by individuals or by agencies of the United States. If no bar appears, the law examiner will make careful analysis of the application to be sure the applicant has complied with the requirements of the statute, Department regulations and decisions. Some typical problems that may confront the law examiner are whether the applicant is a citizen of the United States or whether he has declared his intention to become a citizen? Has sufficient discovery been made to justify the grant of a patent to the applicant? Has the applicant expended \$500 in labor and improvements under the necessary standards which constitute labor and improvements?

The law examiner considers the confidential field reports prepared by the Division of Investigation, which has investigated the bona fides of the claim. This report is compiled through interviews with persons familiar with the applicant's activities, as well as the applicant himself, and a careful examination may be made of the claim and the improvements thereon. Results of this investigation, which are not divulged to the applicant, frequently indicate a failure on the part of the applicant to satisfy the statutory requirements.

ADJUDICATION OF APPLICATION⁶⁸

If the law examiner approves the application, ordinarily it is not reviewed by any one else. If the case is one of special importance it is reviewed by the Chief or Assistant Chief of the Mineral Division, and possibly by the law division, prior to submission of the recommendations to the Director. If no change is made in the examiner's conclusions, a patent issues directly from the office of the Director, signed by the recorder in the name of the President.

65. *Id.* at 185.82 (c).

66. *Id.* at 185.83.

67. *Att'y Gen. Comm. Ad. Proc., Admin. Proc., Sen. Doc. No. 10, Part 7, 77th Cong., 1st Sess. 27-29, 1941*). It should be noted that the procedure described is 14 years old and may be subject to some changes since then; however, some comparable procedure is presumably still used and any major changes would be with regard to the title of the officers mentioned.

68. *Ibid.*

Cases involving unfavorable action, or rejection, fall into three categories:

(1) The law examiner finds defects on the face of the papers, which, if beyond cure, necessitates rejection of the application.

(2) The application may be defective because of the status of the land as ascertained from the tract books. The applicant, for example, may allege he located the claim at a date which post-dated the patenting of the land to a homesteader or the withdrawal of land from entry. In this case a decision is prepared apprising the applicant that unless the defect is cured within 30 days the application will be rejected.

(3) The law examiner concludes on the basis of the report of the Division of Investigation that facts alleged in the application are untrue. In that event charges are prepared leading to a contest in which the issues are resolved after a hearing.

PROTESTS AND CONTESTS⁶⁹

As already noted the Bureau of Land Management can contest a patent application. In addition, other government agencies with certain interests can contest or protest such applications. The Department of Agriculture, for example, may contest an application made for mining patents in lands located within its jurisdiction. There are applicable regulations requiring that notice be given to the appropriate government agency of pending applications, and protest may be made "at any time prior to patent."⁷⁰

Private parties or corporations with a proper interest, but who do not claim mineral rights based on a location adverse to the applicant, may lodge protests in an effort to effectively defeat the issuance of a patent. This could be done by a railroad, for example, alleging that with respect to land granted to it by Congress, but subject to existing rights, that land in question was not of a mineral character as of the appropriation, or that the

69. Proposed Rule Making, 20 Fed. Reg. No. 43, at 1316 (March 3, 1955), 43 Code Fed. Regs. Sec. 221.51 (1955). Contest. Any person who claims title to or an interest in land adverse to any other person claiming an interest in such land or who seeks to acquire a preference right (43 U.S.C. 329), may initiate proceedings to have such adverse interest invalidated for any reason not shown by the records of the Bureau of Land Management. Such a proceeding will constitute a private contest and will be governed by the regulations in this part. *Id.* at 221.67. Government contest. The Government may initiate contests for any cause affecting the legality or validity of any entry or settlement or mining claim. *Id.* at 221.63. Proceedings in Government contests. The proceedings in Government contests shall be governed by the rules relating to proceedings in private contests with the following exceptions: (a) No corroboration shall be required of a Government complaint. (b) No filing fee or deposit toward reporter's fee shall be required of the Government. (c) Any action required of the contestant may be taken by any authorized Government employee. (d) The statement required by Sec. 221.54 (e) need not be included in the complaint. *Id.* at 221.52. Protests. Where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances.

70. *U.S. v. Al Sarena*, *op. cit. supra*, note 51. The provision applicable to the Department of Agriculture protesting applications for mineral patents relating to claims in the National Forest is 43 C.F.R. 205.6.

application for mineral patent was fatally defective.⁷¹ A federal oil and gas lessee or applicant for a federal oil and gas lease could protest the issuance of a mineral patent conflicting with the lease or lease application on the ground that the applicant is not entitled to a patent.⁷² The issue usually raised in the latter type of protest is whether the mining applicant has made valuable discovery of minerals;⁷³ this type of protest will be less likely to occur in the future because of the enactment of the Multiple Mineral Development Statute.⁷⁴ The issues raised in this type of proceeding are proper subjects for the Department of Interior rather than the courts to pass on. Even after judgment has been entered upon an adverse claim in an adverse proceeding, the Bureau of Land Management may initiate a contest to determine the character of the land and whether the prerequisites of the law relating to mineral patents have been complied with in good faith.⁷⁵

As previously noted adverse proceedings involve conflicting mining claims and related issues, and are concerned exclusively with the possessory rights of the rival claimants. The adverse claimant who has lost through judgment or because of failure to adverse, cannot rely upon a protest as a means of preserving a conflict.⁷⁶

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71. *Grand Canyon Ry. Co. v. Cameron*, op. cit. supra, note 52, at 196.
 72. *Jebson v. Spencer*, Department of Interior, A-26596, June 11, 1953.
 73. See Note, *Valuable Mineral Discovery*, supra p. 214.
 74. See, *Bloomenthal*, supra p. 139.
 75. *Lane v. Cameron*, op. cit. supra, note 52, at 196.
 76. 43 Code Fed. Regs. op. cit. supra, note 66, 185.86.