

**UNITED STATES PATENT AND TRADEMARK OFFICE  
REGISTRATION EXAMINATION  
FOR PATENT ATTORNEYS AND AGENTS**

**APRIL 15, 2003**

**Morning Session (50 Points)**

**Time: 3 Hours**

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**DIRECTIONS**

This session of the examination is an open book examination. You may use books, notes, or other written materials that you believe will be of help to you *except* you may not use prior registration examination questions and/or answers. Books, notes or other written materials containing prior registration examination questions and/or answers *cannot* be brought into or used in the room where this examination is being administered. If you have such materials, you must give them to the test administrator before this session of the examination begins.

All questions must be answered in SECTION 1 of the Answer Sheet which is provided to you by the test administrator. You must use a No. 2 pencil (or softer) lead pencil to record your answers on the Answer Sheet. Darken *completely* the circle corresponding to your answer. You must keep your mark within the circle. Erase *completely* all marks except your answer. Stray marks may be counted as answers. No points will be awarded for incorrect answers or unanswered questions. Questions answered by darkening more than one circle will be considered as being incorrectly answered.

This session of the examination consists of fifty (50) multiple choice questions, each worth one (1) point. Do not assume any additional facts not presented in the questions. The most correct answer is the policy, practice, and procedure which must, shall, or should be followed in accordance with the U.S. patent statutes, USPTO rules, and the procedures set forth in the Manual of Patent Examining Procedure (MPEP). Each question has only one most correct answer. Where choices (A) through (D) are correct and choice (E) is "All of the above," the last choice (E) will be the most correct answer and the only answer that will be accepted. Where two or more choices are correct, the most correct answer is the answer that refers to each and every one of the correct choices. Where a question includes a statement with one or more blanks or ends with a colon, select the answer from the choices given to complete the statement that would make the statement *true*. If it is determined by the USPTO that there is more than one most correct answer to a question, each most correct answer will be accepted, but only one point will be given for the question. The presence of multiple most correct answers does not, in itself, render the question ambiguous. Unless otherwise explicitly stated, all references to patents or applications are to be understood as being U.S. patents or regular (non-provisional) utility applications for utility inventions only, as opposed to plant or design applications for plant and design inventions. Where the terms "USPTO" or "Office" are used in this examination, they mean the United States Patent and Trademark Office.

You may write anywhere on the examination booklet. However, do not remove any pages from the booklet. Only answers recorded in SECTION 1 of your Answer Sheet will be graded. **YOUR COMBINED SCORE OF BOTH THE MORNING AND AFTERNOON SESSIONS MUST BE AT LEAST 70 POINTS TO PASS THE REGISTRATION EXAMINATION.**

**DO NOT TURN THIS PAGE UNTIL YOU ARE INSTRUCTED TO**

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1. In accordance with the USPTO rules and the procedures set forth in the MPEP, which of the following statements is most correct?

- (A) The same evidence sufficient to establish a constructive reduction to practice is necessarily also sufficient to establish actual reduction to practice.
- (B) Proof of constructive reduction to practice does not require sufficient disclosure to satisfy the “how to use” and “how to make” requirements of 35 USC 112, first paragraph.
- (C) A process is reduced to actual practice when it is successfully performed.
- (D) The diligence of 35 USC 102(g) requires an inventor to drop all other work and concentrate on the particular invention.
- (E) The diligence of 35 USC 102(g) does not impose on a registered practitioner any need for diligence in preparing and filing a patent application inasmuch as such the practitioner’s acts do not inure to the benefit of the inventor.

2. A registered practitioner filed in the USPTO a client’s utility patent application on December 30, 2002. The application was filed with a request for nonpublication, certifying that the invention disclosed in the U.S. application has not and will not be the subject of an application in another country, or under a multilateral international agreement, that requires eighteen month publication. Subsequently, the client files an application in Japan on the invention and some recent improvements to the invention. The improvements are not disclosed or supported in the utility application. Japan is a country that requires eighteen month publication. Two months after filing the application in Japan, and before filing any other papers in the USPTO, the client remembers that a nonpublication request was filed and informs the practitioner about the application that was filed in Japan. Which of the following courses of action is in accordance with the USPTO rules and the procedures set forth in the MPEP?

- (A) The application is abandoned because the practitioner did not rescind the nonpublication request and provide notice of foreign filing within 45 days of having filed the application in Japan. The applicant must now file a petition and fee to revive under 37 CFR 1.137(b).
- (B) The application is abandoned because the applicant did not rescind the nonpublication request before filing the application in Japan. The applicant must now file a petition and fee to revive under 37 CFR 1.137(b).
- (C) The applicant should file an amendment to the specification of the U.S. application, adding the recent improvements to the disclosure in the specification.
- (D) The application is abandoned because the applicant did not rescind the nonpublication request by notifying the Office under 37 CFR 1.213(c) within the appropriate time. The applicant must now file a petition and fee to revive under 37 CFR 1.137(b).
- (E) The applicant could today notify the USPTO of the foreign filing. It is not necessary to file a petition and fee to revive for the application to continue to be examined in the USPTO.

3. Registered practitioner Rick drafted a patent application for inventor Sam. The application was filed in the USPTO on May 15, 2000, with a power of attorney appointing Rick. On March 15, 2001, Sam filed a revocation of the power of attorney to Rick, and a new power of attorney appointing registered practitioner Dave. In a non-final Office action dated September 12, 2001, the examiner included a requirement for information, requiring Dave to submit a copy of any non-patent literature, published application, or patent that was used to draft the application. Which of the following, if timely submitted by Dave in reply to the requirement for information, will be accepted as a complete reply to the requirement for information?

- (A) A statement by Dave that the information required to be submitted is unknown and is not readily available to Dave.
- (B) A statement by Dave that the requirement for information is improper because it was included in a non-final Office action.
- (C) A statement by Dave that the requirement for information is improper because Dave is not an individual identified under 37 CFR 1.56(c).
- (D) A statement by Dave that the requirement for information is improper because information used to draft a patent application may not be required unless the examiner identifies the existence of a relevant database known by Sam that could be searched for a particular aspect of the invention.
- (E) None of the above.

4. In accordance with the USPTO rules and the procedures set forth in the MPEP, which of the following presents a Markush group in accordance with proper PTO practice and procedure?

- (A) R is selected from the group consisting of A, B, C, or D.
- (B) R is selected from the group consisting of A, B, C, and D.
- (C) R is selected from the group comprising A, B, C, and D.
- (D) R is selected from the group comprising A, B, C or D.
- (E) R is A, B, C, and D.

5. In accordance with the USPTO rules and the procedures set forth in the MPEP, which of the following may not be filed by facsimile transmission?

- (A) A request for continued examination under 37 CFR 1.114 along with a submission.
- (B) A continued prosecution application under 37 CFR 1.53(d).
- (C) An amendment in reply to a non-final Office action.
- (D) The filing of a provisional patent application specification and drawing for the purpose of obtaining an application filing date.
- (E) (B) and (D).

6. According to the USPTO rules and the procedures set forth in the MPEP, in which of the following situations would the finality of an Office action rejection be improper?

- I. The final Office action rejection is in a first Office action in a substitute application that contains material which was presented in the earlier application after final rejection but was denied entry because the issue of new matter was raised.
- II. The final Office action rejection is in a first Office action in a continuing application, all claims are drawn to the same invention claimed in the earlier application, and the claims would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application.
- III. The final Office action rejection is in a first Office action in a continuation-in-part application where at least one claim includes subject matter not present in the earlier application.

- (A) I
- (B) II
- (C) III
- (D) I and III
- (E) II and III

7. In accordance with the USPTO rules and the procedures set forth in the MPEP, which of the following is true?

- (A) In rejecting claims the examiner may rely upon facts within his own personal knowledge, unless the examiner qualifies as an expert within the art, in which case he is precluded from doing so, since only evidence of one of ordinary skill in the art is permitted.
- (B) If an applicant desires to claim subject matter in a reissue which was the same subject matter waived in the statutory invention registration of another, the applicant is precluded by the waiver from doing so, even though the applicant was not named in the statutory invention registration.
- (C) If an applicant, knowing that the subject matter claimed in his patent application was on sale in Michigan and sales activity is a statutory bar under 35 USC 102(b) to the claims in his application, nevertheless withholds the information from the patent examiner examining the application, and obtains a patent including the claims in question, the applicant may remove any issue of inequitable conduct by filing a request for reexamination based on the sales activity.
- (D) An applicant for a patent may overcome a statutory bar under 35 USC 102(b) based on a patent claiming the same invention by acquiring the rights to the patent pursuant to an assignment and then asserting the assignee's right to determine priority of invention pursuant to 37 CFR 1.602.
- (E) None of the above.

8. Following a restriction requirement and election, a registered practitioner received a first Office action dated Friday, December 1, 2000. The primary examiner indicated that claims 1 to 10 were rejected and claims 11 to 20 were withdrawn from consideration. The first Office action set a 3 month shortened statutory period for reply. On February 28, 2001, the practitioner properly filed an express abandonment in the application and at the same time filed a request for continuing application. In a non-final Office action dated May 1, 2001 in the continuing application, the examiner indicated in that claims 1 to 20, all of the pending claims, are rejected. The practitioner filed a notice of appeal on Monday, July 2, 2001. In accordance with USPTO rules and procedures set forth in the MPEP, which of the following most accurately describes the propriety of the practitioner's reply to the May 1<sup>st</sup> Office action?

- (A) The notice of appeal is not a proper response because the claims of the continuing application have not been finally rejected.
- (B) The notice of appeal is not a proper reply because all of the claims in the continuing application have not been twice rejected.
- (C) The filing of a notice of appeal is not a proper reply because not all the claims in the continuing application have been twice rejected.
- (D) A notice of appeal is never a proper response to a non-final rejection.
- (E) The reply is proper.

9. Which of the following is not in accordance with the provisions of the USPTO rules and the procedures set forth in the MPEP?

- (A) Where joint inventors are named, the examiner should not inquire of the patent applicant concerning the inventors and the invention dates for the subject matter of the various claims until it becomes necessary to do so in order to properly examine the application.
- (B) Under 35 USC 119(a), the foreign priority benefit may be claimed to any foreign application that names a U.S. inventor as long as the U.S. named inventor was the inventor of the foreign application invention and 35 USC 119(a)-(d) requirements are met.
- (C) Where two or more foreign applications are combined in a single U.S. application, to take advantage of the changes to 35 USC 103 or 35 USC 116, the U.S. application may claim benefit under 35 USC 119(a) to each of the foreign applications provided all the requirements of 35 USC 119(a)-(d) are met.
- (D) One of the conditions for benefit under 35 USC 119(a) is that the foreign application must be for the same or a nonobvious improvement of the invention described in the United States application.
- (E) If a foreign application for which priority is being claimed under 35 USC 119 is filed in a country which does not afford similar privileges in the case of applications filed in the United States or to citizens of the United States and the foreign country is not a WTO member country, any claim for the foreign priority thereto by a U.S. application will not be effective.

10. A registered practitioner filed a patent application naming Sam as the sole inventor without an executed declaration under 37 CFR 1.63. The USPTO mailed a Notice to File Missing Parts dated January 3, 2000. The Notice to File Missing Parts set a two-month period for reply. Which of the following statements is in accordance with proper USPTO rules and the procedure set forth in the MPEP?

- I. Submit an appropriate reply to the Notice to File Missing Parts by filing, on August 3, 2000, a declaration under 37 CFR 1.63 executed by Sam, accompanied by a petition under 37 CFR 1.136(a) for an extension of five months, and the fee set forth in 37 CFR 1.17(a).
- II. In no situation can any extension requested by the practitioner carry the date on which a reply is due to the Notice to File Missing Parts beyond Monday, July 3, 2000.
- III. An appropriate reply by the practitioner to the Notice to File Missing Parts is to file, on August 3, 2000 a declaration under 37 CFR 1.63 executed by Sam, accompanied by a petition under 37 CFR 1.136(b).

- (A) I
- (B) II
- (C) III
- (D) I and III
- (E) None of the above.

11. In accordance with the USPTO rules and procedures set forth in the MPEP, a Certificate of Correction effectuates correction of an issued patent where:

- (A) Through error and without deceptive intent, there is a failure to make reference to a prior copending application according to 37 CFR 1.78, and the failure does not otherwise affect what is claimed, but the prior copending application is referenced in the record of the application, and a petition under 37 CFR 1.324 and appropriate fees were filed.
- (B) Through error and without deceptive intent, a preferred embodiment that materially affects the scope of the patent was omitted in the original disclosure in the filed application, and a petition under 37 CFR 1.324 and appropriate fees were filed.
- (C) Through error and without deceptive intent, a prior copending application is incorrectly referenced in the application, the incorrect reference does not otherwise affect the claimed subject matter, and the prior copending application is correctly identified elsewhere in the application file, and a petition under 37 CFR 1.324 and appropriate fees were filed.
- (D) Through error and without deceptive intent, an inventor's name is omitted from an issued patent, a petition under 37 CFR 1.324 and appropriate fees were filed, and the petition was granted.
- (E) (A), (C) and (D).

12. The Potter patent application was filed on June 6, 2002, claiming subject matter invented by Potter. The Potter application properly claims priority to a German application filed on June 6, 2001. A first Office action contains a rejection of all the claims of the application under 35 USC 103(a) based on a U.S. patent application publication to Smith in view of a U.S. patent to Jones. A registered practitioner prosecuting the Potter application ascertains that the relevant subject matter in Smith's published application and Potter's claimed invention were, at the time Potter's invention was made, owned by ABC Company or subject to an obligation of assignment to ABC Company. The practitioner also observes that the Smith patent application was filed on April 10, 2001 and that the patent application was published on December 5, 2002. Smith and Potter do not claim the same patentable invention. To overcome the rejection without amending the claims, which of the following timely replies would comply with the USPTO rules and the procedures set forth in the MPEP to be an effective reply for overcoming the rejection?

- (A) A reply that only contains arguments that Smith fails to teach all the elements in the only independent claim, and which specifically points out the claimed element that Smith lacks.
- (B) A reply that properly states that the invention of the Potter application and the Smith application were commonly owned by ABC Company at the time of the invention of the Potter application.
- (C) A reply that consists of an affidavit or declaration under 37 CFR 1.132 stating that the affiant has never seen the invention in the Potter application before.
- (D) A reply that consists of an affidavit or declaration under 37 CFR 1.131 properly proving invention of the claimed subject matter of Potter application only prior to June 6, 2001.
- (E) A reply that consists of a proper terminal disclaimer and affidavit or declaration under 37 CFR 1.130.

13. In accordance with the USPTO rules and the procedures set forth in the MPEP, impermissible recapture in an application exists \_\_\_\_\_

- (A) if the limitation now being added in the present reissue was originally presented/argued/stated in the original application to make the claims allowable over a rejection or objection made in the original application.
- (B) if the limitation now being omitted or broadened in the present continuation was originally presented/argued/stated in a parent application to make the claims allowable over a rejection or objection made in the parent application.
- (C) if the limitation now being omitted or broadened in the present reissue was originally presented/argued/stated in the original application to make the claims allowable over a rejection or objection made in the original application.
- (D) if the limitation now being omitted or broadened in the present reissue was being broadened for the first time more than two years after the issuance of the original patent.
- (E) None of the above.

14. With the exception that under 37 CFR 1.53 an application for patent may be assigned a filing date without payment of the basic filing fee, USPTO fees and charges payable to the USPTO requesting any action by the Office for which a fee or charge is payable, are required to be paid, in accordance with the MPEP and USPTO rules and procedure:

- (A) in advance, that is, at the time of requesting any action.
- (B) upon written notice from the USPTO.
- (C) within 20 days of requesting any action.
- (D) by the end of the fiscal year.
- (E) there are no fees.

15. In which of the following final Office action rejections is the finality of the Office action rejection in accordance with the USPTO rules and the procedures set forth in the MPEP?

- (A) The final Office action rejection is in a second Office action and uses newly cited art under 35 USC 102(b) to reject unamended claims that were objected to but not rejected in a first Office action.
- (B) The final Office action rejection is in a first Office action in a continuation-in-part application where at least one claim includes subject matter not present in the parent application.
- (C) The final Office action rejection is in a first Office action in a continuing application, all claims are drawn to the same invention claimed in the parent application, and the claims would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the parent application.
- (D) The final Office action rejection is in a first Office action in a substitute application that contains material that was presented after final rejection in an earlier application but was denied entry because the issue of new matter was raised.
- (E) None of the above.

16. In accordance with the USPTO rules and the procedures set forth in the MPEP, for a nonprovisional application to receive a filing date in the USPTO under 37 CFR 1.53(b), all of the following must be filed except:

- (A) The basic filing fee required by 37 CFR 1.16(a).
- (B) A specification as prescribed by the first paragraph of 35 USC 112.
- (C) A description pursuant to 37 CFR 1.71.
- (D) At least one claim pursuant to 37 CFR 1.75.
- (E) Any drawing required by 37 CFR 1.81(a).

17. In accordance with the USPTO rules and the procedures set forth in the MPEP, which of the following is true?

- (A) A claim to a process omitting a step in a disclosed process, where the step is disclosed in the specification to be essential to the invention, may not be properly rejected under 35 USC 112, first paragraph, for lack of enablement where the specification provides an enabling disclosure only for the process which includes the essential step.
- (B) Failure to disclose the best mode must rise to the level of active concealment or grossly inequitable conduct in order to support a rejection under 35 USC 112, first paragraph.
- (C) A claim failing to interrelate essential elements of the invention, as defined by the applicant in the specification, where the interrelation is critical to the invention may be properly rejected under 35 USC 112, second paragraph, for failure to properly point out and distinctly claim the invention.
- (D) Where the best mode contemplated by the inventor at the time of filing the application is not disclosed, a proposed amendment adding a specific mode of practicing the invention would not be new matter.
- (E) The best mode requirement is the same as the enablement requirement of the first paragraph of 35 USC 112.

18. In accordance with the USPTO rules and the procedures set forth in the MPEP, which of the following statements is true?

- (A) Where sole patent applicant Able claims his invention in a Jepson-type claim, and the specification discloses that the subject matter of the preamble was invented by Baker before applicant's invention, the preamble is properly treated as prior art.
- (B) Where the sole patent applicant Able claims his invention in a Jepson-type claim, and the specification makes it clear that the claimed invention is an improvement on Able's own prior invention, which Able discovered less than one year before the filing date of the application, the preamble in the claim is properly treated as prior art.
- (C) Where the sole patent applicant Able claims his invention in a Jepson-type claim, and the specification makes it clear that the claimed invention is an improvement on an invention that Able discovered and publicly used and commercially sold by Able in Texas for several years before the filing date of the application, the preamble in the claim cannot properly be treated as prior art.
- (D) Where the sole applicant, Baker, states that something is prior art, the statement can be taken as being admitted prior art only if corroborated by objective evidence proffered by Baker, or found by the examiner.
- (E) No claim, including a Jepson-type claim, carries with it an implied admission that the elements in the preamble are old in the art.

19. Which of the following requests by the registered practitioner of record for an interview with an examiner concerning an application will be granted in accordance with proper USPTO rules and procedure?

- (A) A request for an interview in a substitute application prior to the first Office action, for the examiner and attorney of record to meet in the practitioner's office without the authority of the Commissioner.
- (B) A request for an interview in a continued prosecution application prior to the first Office action, to be held in the examiner's office.
- (C) A request for an interview in a non-continuing and non-substitute application, prior to the first Office action to be held in the examiner's office.
- (D) All of the above.
- (E) None of the above.

20. During his summer vacation to the mountains, Eric discovered and isolated a microorganism which secretes a novel compound. Eric purified and tested the compound in tumor-containing control mice and found that the tumors disappeared after one week; whereas tumor-containing mice which did not receive the compound died. Eric was very excited about his results and so he did a few additional experiments to characterize the microorganism and the compound which it was secreting. Eric determined that the microorganism was an S. spectaculus, and that the secreted compound was so unlike any other compounds that Eric named it spectaculysem. Eric told his friend Sam about his discovery, who urged him to apply for a U.S. patent on the microorganism and the secreted product. Eric did so, but to his amazement, a primary examiner rejected all the claims to his inventions. Which of the following, if made by the examiner, would be a proper rejection in accordance with USPTO rules and procedures set forth in the MPEP?

- (A) The examiner's rejection of the claims to the microorganism under 35 USC 101 as being unpatentable because microorganisms are living matter and living matter is non-statutory subject matter.
- (B) The examiner's rejection of the claims to the compound under 35 USC 101 as having no credible utility because Eric has only tested the compound in mice and curing mice of cancer has no "real world" value. The examiner also states that Eric must demonstrate that the compound works in humans in order to show that it has a patentable utility.
- (C) The examiner's rejection of the claims to the compound under 35 USC 103, stating that it would have been obvious to one of ordinary skill in the art to test the by product of a newly-discovered microorganism for therapeutic uses.
- (D) The examiner's rejection of the claims to the microorganism under 35 USC 102/103 over a reference which teaches an S. spectaculus microorganism stating that Eric's claimed microorganism is the same as, or substantially the same as, the microorganism described in the prior art.
- (E) None of the above.

21. Assuming that any rejection has been properly made final, which of the following statements is not in accordance with the USPTO rules and the procedures set forth in the MPEP?

- (A) An objection and requirement to delete new matter from the specification is subject to supervisory review by petition under 37 CFR 1.181.
- (B) A rejection of claims for lack of support by the specification (new matter) is reviewable by appeal to the Board of Patent Appeals and Interferences.
- (C) If both the claims and the specification contain the same new matter, and there has been both a rejection and objection by the primary examiner, the new matter issue should be decided by petition, and is not appealable.
- (D) If both the claims and the specification contain the same new matter, and there has been both a rejection and objection by the examiner, the new matter issue is appealable, and should not be decided by petition.
- (E) None of the above.

22. On January 2, 2001, a registered practitioner filed a patent application with the USPTO for inventor Beck. The application includes a specification and a single claim to the invention which reads as follows:

1. Mixture Y made by the process Q1.

In the specification, Mr. Beck discloses that mixture Y has a melting point of 150° F. On June 2, 2001, the practitioner received an Office action from the primary examiner rejecting the claim. The claim is rejected under 35 USC 102/103 as being clearly anticipated by or obvious over Patent A. The examiner states “Patent A teaches mixture Y but made by a different process Q2.” Beck believes he is entitled to a patent to mixture Y. In accordance with USPTO rules and procedures set forth in the MPEP, which of the following would be the best reply to the rejection of his claim?

- (A) An argument that the claimed product has an unexpectedly low melting point of 150° F, supported by an affidavit showing that the mixture Y made by process Q2 exhibits a melting point of 300° F.
- (B) An argument that the processes used by applicant and patent A are different, supported by a third-party declaration stating only that the processes are different.
- (C) An argument that the claimed product has an unexpectedly low melting point of 150° F, supported by a third-party declaration stating only that the products are different.
- (D) An argument that the processes used by applicant and patent A are different, supported by an affidavit showing that the mixture Y made by process Q2 exhibits a melting point of 300° F.
- (E) An argument that the claimed product has an unexpectedly low melting point of 150° F because the claimed mixture Y has a melting point of 150° F and the mixture Y of patent A has a melting point of 300° F.

23. Which of the following is not prohibited conduct for a practitioner under the USPTO Code of Professional Responsibility?

- (A) Entering into an agreement with the client to limit the amount of any damages which the client may collect for any mistakes the practitioner may make during prosecution of the client's patent application in exchange for prosecuting the application at a reduced fee.
- (B) Encouraging the client to meet with an opposing party for settlement discussions.
- (C) Failing to disclose controlling legal authority which is adverse to the practitioner's client's interest when arguing the patentability of claims in a patent application.
- (D) In reply to an Office action, stating honestly and truthfully in the remarks accompanying an amendment that the practitioner has personally used the device and found it to be very efficient and better than the prior art.
- (E) Investing the funds the client advanced for the practitioner legal fees (not costs and expenses) in long term United States Treasury Bills in order to obtain guaranteed protection of the principal.

24. Sam is a sole proprietor of *Sam's Labs*, which has no other employees. Sam invented a new drug while doing research under a Government contract. Sam desires to file a patent application for his invention and assign it to *Sam's Labs*. Sam has licensed Rick, also a sole proprietor with no employees, to make and use his invention. Sam wants to claim small entity status when filing a patent application for his invention. Sam also wants to grant the Government a license, but will not do so if he will be denied small entity status. Sam has limited resources and wants to know whether, how, and to what extent he may claim small entity status. Which of the following is not in accord with the USPTO rules and the procedures set forth in the MPEP in relation to applications filed on or after January 1, 2001?

- (A) *Sam's Labs* is a small business concern for the purposes of claiming small entity status for fee reduction purposes.
- (B) If Sam grants a license to the Government resulting from a rights determination under Executive Order 10096, it will not constitute a license so as to prohibit claiming small entity status.
- (C) The establishment of small entity status permits the recipient to pay reduced fees for all patent application processing fees charged by the USPTO.
- (D) Sam may establish small entity status by a written assertion of entitlement to small entity status. A written assertion must: (i) be clearly identifiable; (ii) be signed; and (iii) convey the concept of entitlement to small entity status, such as by stating that applicant is a small entity, or that small entity status is entitled to be asserted for the application or patent.
- (E) While no specific words or wording are required to assert small entity status, the intent to assert small entity status must be clearly indicated in order to comply with the assertion requirement.

25. In accordance with USPTO rules and procedures set forth in the MPEP, which of the following is not a proper basis on which the Board of Patent Appeals and Interferences may remand a case to the examiner?

- (A) Remand for a fuller description of the claimed invention.
- (B) Remand for a clearer explanation of the pertinence of the references.
- (C) Remand for a selection by the primary examiner of a preferred or best ground of rejection when multiple rejections of a cumulative nature have been made by the examiner.
- (D) Remand to the primary examiner with instructions to consider an affidavit not entered by the examiner which was filed after the final rejection but before the appeal.
- (E) Remand to the primary examiner to prepare a supplemental examiner's answer in response to a reply brief.

26. A registered practitioner filed a utility application on February 11, 2002. On April 4, 2002, the practitioner filed an information disclosure statement (IDS) in the application. The practitioner received a notice of allowance dated January 3, 2003 soon after it was mailed. When discussing the application with the practitioner on January 21, 2003, and before paying the issue fee, the client notices for the first time that a reference, which is one of many patents obtained by the client's competitor, was inadvertently omitted from the IDS. The client has been aware of this reference since before the application was filed. The client is anxious to have this reference appear on the face of the patent as having been considered by the USPTO. Which of the following actions, if taken by the practitioner, would not be in accord with the USPTO rules and the procedures set forth in the MPEP?

- (A) Before paying the issue fee, timely file an IDS citing the reference, along with the certification specified in 37 CFR 1.97(e), and any necessary fees.
- (B) Within three months of the mail date of the notice of allowance, without paying the issue fee, timely file a Request for Continued Examination (RCE) under 37 CFR 1.114, accompanied by the fee for filing an RCE, and an IDS citing the reference.
- (C) Within three months of the mail date of the notice of allowance, without paying the issue fee, timely file a continuing application under 37 CFR 1.53(b), an IDS citing the reference, and any necessary fees.
- (D) After paying the issue fee, timely file a petition to withdraw the application from issue to permit the express abandonment of the application in favor of a continuing application, a continuation application under 37 CFR 1.53(b), an IDS citing the reference, and any necessary fees.
- (E) After paying the issue fee, timely file a petition to withdraw the application from issue to permit consideration of a Request for Continued Examination (RCE) under 37 CFR 1.114, the fee for filing an RCE, and an IDS citing the reference.

27. Assume that conception of applicant's complex invention occurred prior to the date of the reference, but reduction to practice occurred after the date of the reference. Which of the following is sufficient to overcome the reference in accordance with the USPTO rules and the procedures set forth in the MPEP?

- (A) In a 37 CFR 1.131 affidavit or declaration, it is sufficient to allege that applicant or patent owner has been diligent.
- (B) In a 37 CFR 1.131 affidavit or declaration, it is sufficient to clearly establish conception of the invention prior to the effective date of the reference, and diligence from just prior to the effective date of the reference to actual reduction to practice. The presence of a lapse of time between the reduction to practice of an invention and the filing of an application thereon is not relevant.
- (C) In a 37 CFR 1.131 affidavit or declaration, it is sufficient to clearly establish conception of the invention prior to the effective date of the reference. Diligence need not be considered.
- (D) In a 37 CFR 1.131 affidavit or declaration, it is sufficient to show conception and reduction to practice in any country.
- (E) In a 37 CFR 1.131 affidavit or declaration, it is always sufficient to prove actual reduction to practice for all mechanical inventions by showing plans for the construction of the claimed apparatus.

28. A non-final Office action dated Friday, November 8, 2000 set a three month shortened statutory period for reply. The practitioner petitioned for a one-month extension of time on Monday, February 10, 2003 and paid the appropriate one-month extension fee. An amendment responsive to the Office action was filed on Tuesday, March 11, 2003. Each independent claim in the application was revised and two dependent claims were cancelled. No claim was added by the amendment. In the Remarks portion of the amendment, the practitioner express his belief that no fees are required by the amendment, but nevertheless authorized charging any necessary fees to the practitioner's deposit account, including fees for any required extension of time. A duplicate copy of the amendment was filed. No fees were submitted with the amendment. Assuming a valid deposit account, which of the following statements is in accord with the USPTO rules and the procedures set forth in the MPEP?

- (A) The amendment should be entered with no fees charged to practitioner's deposit account.
- (B) The amendment should be entered, but the fee for a second month extension of time should be charged to the practitioner's deposit account.
- (C) The amendment should not be entered because it is untimely.
- (D) The request to charge any required fees, including fees for any necessary extension of time, is ineffective because it was not made in a separate paper.
- (E) Statements (C) and (D) are in accord with the USPTO rules and the procedures set forth in the MPEP.

29. In accordance with the USPTO rules and the procedures set forth in the MPEP, which of the following papers is precluded from receiving the benefit of a certificate of mailing or transmission under 37 CFR 1.8?

- (A) An amendment, replying to an Office action setting a period for reply, transmitted by mail with a certificate of mailing to the USPTO from a foreign country.
- (B) An amendment, replying to an Office action setting a period for reply, transmitted by facsimile with a certificate of transmission to the USPTO from a foreign country.
- (C) An information disclosure statement (IDS) under 37 CFR 1.97 and 1.98 transmitted after the first Office action.
- (D) A request for continued examination (RCE) under 37 CFR 1.114.
- (E) An appeal brief.

30. A patent application includes the following Claim 1:

Claim 1. A method of making an electrical device comprising the steps of:

- (i) heating a base made of carbon to a first temperature in the range of 1875°C to 1925°C;
- (ii) passing a first gas over said heated base, said first gas comprising a mixture of hydrogen, SiCl<sub>4</sub>, phosphorus, and methane, whereby said first gas decomposes over said heated base and thereby forms a first deposited layer of silicon, phosphorus and carbon on said heated base;
- (iii) heating said base having said deposited layer to a second temperature of approximately 1620°C; and
- (iv) passing a second gas over said base heated to said second temperature, said second gas consisting of a mixture of hydrogen, SiCl<sub>4</sub>, AlCl<sub>3</sub>, and methane, whereby said second gas decomposes over said heated base to form a second deposit layer adjacent said first layer, said second layer comprising silicon, aluminum and carbon.

Assuming proper support in the specification, which of the following claims, if presented in the same application, is a proper claim in accordance with the USPTO rules and the procedures set forth in the MPEP?

- (A) Claim 2. The method of claim 1, wherein said first temperature is in the range of 1800°C to 2000°C.
- (B) Claim 3. The method of claim 1, wherein said first gas further comprises an inert gas.
- (C) Claim 4. The method of claim 1, wherein said second gas further comprises Argon.
- (D) Claim 5. The method of claim 1, wherein said first gas is an inert gas such as Argon.
- (E) Claim 6. The method of claim 1, wherein said second gas consists of a mixture of hydrogen, SiCl<sub>4</sub> and AlCl<sub>3</sub> only.

31. In accordance with the USPTO rules and the procedures set forth in the MPEP, which of the following documents, if any, must also contain a separate verification statement?

- (A) Small entity statements.
- (B) A petition to make an application special.
- (C) A claim for foreign priority.
- (D) An English translation of a non-English language document.
- (E) None of the above.

32. Lucy, new associate of a registered practitioner, wants to know whether she must file an application data sheet with a provisional patent application of an applicant and what information she should include on the application data sheet. Lucy has previously submitted an application data sheet with a previously filed application for another applicant, but has discovered a discrepancy with the information contained in the declaration and application data sheet. Lucy wonders if she needs to correct the error if the correct information is contained in the declaration. She also asks how errors may be corrected. With respect to the filing of an application data sheet, which of the following is not in accord with the USPTO rules and the procedures set forth in the MPEP for applications filed on or after January 1, 2001?

- (A) An application data sheet is a sheet or sheets that may be voluntarily submitted in either provisional or nonprovisional applications, which contains bibliographic data, arranged in a format specified by the Office. If an application data sheet is provided, the application data sheet is part of the provisional or nonprovisional application for which it has been submitted.
- (B) Bibliographic data on an application data sheet includes: (1) applicant information, (2) correspondence information, (3) application information, (4) representative information, (5) domestic priority information, (6) foreign priority information, and (7) assignee information.
- (C) Once captured by the Office, bibliographic information derived from an application data sheet containing errors may not be corrected and recaptured by a request therefore accompanied by the submission of a supplemental application data sheet, an oath or declaration under 37 CFR 1.63 or 1.67; nor will a letter pursuant to 37 CFR 1.33(b) be acceptable.
- (D) In general, supplemental application data sheets may be subsequently supplied prior to payment of the issue fee either to correct or update information in a previously submitted application data sheet.
- (E) The Office will initially capture bibliographic information from the application data sheet notwithstanding whether an oath or declaration governs the information. Thus, the Office shall generally not look to an oath or declaration under 37 CFR 1.63 to see if the bibliographic information contained therein is consistent with the bibliographic information captured from an application data sheet (whether the oath or declaration is submitted prior to or subsequent to the application data sheet).

33. A claim in a pending patent application for an electric toothbrush is rejected under 35 USC 102 as being anticipated by a U.S. Patent, which was issued to Lancer, the sole name inventor, for a similar electric toothbrush. The Lancer patent was issued one day before the filing date of the application in question. The claim in the pending application contains a limitation specifying the location of an on/off switch. In accordance with USPTO rules and procedures set forth in the MPEP, which of the following arguments, if true, would overcome the rejection?

- (A) The Lancer patent discloses and claims an electric toothbrush, but does not mention whether its toothbrush includes a power supply.
- (B) Evidence is submitted to show the electric toothbrush claimed in the application is commercially successful.
- (C) The Lancer patent teaches away from the bristles of the claimed toothbrush.
- (D) Lancer is one of the three named inventors of the claimed toothbrush in the pending application.
- (E) The on/off switch in the Lancer patent is on a different side of the body than that recited in the claim for the electric toothbrush in the patent application.

34. Inventor files an application containing the following original Claim 1:

- 1. A widget comprising element A, and element B.

In a first Office action on the merits, a primary examiner rejects claim 1 under 35 USC 103 as being obvious over reference X. Reference X explicitly discloses a widget having element A, but it does not disclose element B. The examiner, however, takes official notice of the fact that element B is commonly associated with element A in the art and on that basis concludes that it would have been obvious to provide element B in the reference X widget. In reply to the Office action, the registered practitioner representing the applicant makes no amendments, but instead requests reconsideration of the rejection by demanding that examiner show proof that element B is commonly associated with element A in the art. Which of the following actions, if taken by the examiner in the next Office action would be in accord with the USPTO rules and the procedures set forth in the MPEP?

- I. Vacate the rejection and allow the claim.
  - II. Cite a reference that teaches element B commonly associated with element A in the art and make the rejection final.
  - III. Deny entry of applicant's request for reconsideration on the ground that it is not responsive to the rejection and allow applicant time to submit a responsive amendment.
- (A) I and II only.
  - (B) II only.
  - (C) II and III only.
  - (D) I, II, and III.
  - (E) I and III only.

35. Igor filed a design patent application in the USPTO on January 24, 2000, which issued as a design patent on January 23, 2001. Igor's design patent covered a design that became immediately popular, resulting in numerous inquiries for licenses from various manufacturers. Igor would like to financially exploit his patent by licensing for five years. However, Igor has decided to dedicate five years of his patent term to the public. Which of the following is in accord with the USPTO rules and the procedures set forth in the MPEP, while best allowing Igor to pursue his intentions?

- (A) Record in the USPTO an assignment of all right, title, and interest in the patent to the public, conditioned on the receipt by Igor of all royalties from licensing the patent after the first five years of the patent term.
- (B) File a disclaimer in the USPTO dedicating to the public the first five years of the patent term.
- (C) File a disclaimer in the USPTO dedicating to the public that portion of the term of the patent from January 24, 2015 to January 24, 2020.
- (D) File a disclaimer in the USPTO dedicating to the public half of all royalties received from licensing the patent for the terminal part of the term of the patent.
- (E) File a disclaimer in the USPTO dedicating to the public that portion of the term of the patent from January 24, 2010 to January 23, 2015.

36. Mike and Alice, who are not related, are shipwrecked on a heretofore uninhabited and undiscovered island in the middle of the Atlantic Ocean. In order to signal for help, Mike invents a signaling device using bamboo shoots. Alice witnesses but does not assist in any way in the development of the invention. The signaling device works and a helicopter comes and rescues Alice. However, Mike remains on the island due to overcrowding on the helicopter. Unfavorable weather conditions have prevented Mike's rescue to date. Alice comes to you, a registered patent practitioner, to file an application for a patent and offers to pay you in advance. Which of the following, in accordance with the USPTO rules and the procedures set forth in the MPEP, is true?

- (A) Since Mike invented the invention, Alice cannot properly file an application for a patent in her name even though Mike is unavailable.
- (B) Since Mike is unavailable, you may properly file an application for a patent without his consent. You can accept the money from Alice as payment for the application.
- (C) Since Mike is not available and cannot be reached, Alice may properly sign the declaration on his behalf since she has witnessed the invention and knows how to make and use it.
- (D) Alice should file an application in her name since she has witnessed the invention and knows how to make and use it. Subsequently, when Mike becomes available, the inventorship may be changed to the correct inventorship.
- (E) Even though Mike and Alice are not related, Alice may properly file an application on Mike's behalf.

37. Applicant properly appealed the primary examiner's final rejection of the claims to the Board of Patent Appeals and Interferences (Board). Claims 1 to 10 were pending in the application. The examiner did not reject the subject matter of claims 7 to 10, but objected to these claims as being dependent on a rejected base claim. Claim 1 was the sole independent claim and the remaining claims, 2 through 10, were either directly or indirectly dependent thereon. After a thorough review of Appellant's brief and the examiner's answer, the Board affirmed the rejection of claims 1 to 6. In accordance with the USPTO rules and the procedures set forth in the MPEP, which of the following is the appropriate action for the examiner to take upon return of the application to his jurisdiction when the time for appellant to take further action under 37 CFR 1.197 has expired?

- (A) Abandon the application since the Board affirmed the rejection of independent claim 1.
- (B) Convert the dependent claims 7 to 10 into independent form by examiner's amendment, cancel claims 1 to 6, and allow the application.
- (C) Mail an Office action to applicant setting a 1-month time limit in which the applicant may rewrite dependent claims 7 to 10 in independent form. If no timely reply is received, the examiner should amend the objected to claims, 7 to 10, and allow the application.
- (D) Mail an Office action to applicant with a new rejection of claims 7 to 10 based on the Board's decision.
- (E) No action should be taken by the examiner since the Board affirmed the rejection of independent claim 1, the application was abandoned on the date the Board decision was mailed.

38. In accordance with the USPTO rules and the procedures set forth in the MPEP, which of the following is true?

- (A) Once the issue fee has become due, provided an original application has not been pending more than three years, the applicant may request and the Office may grant a request for deferral of payment of the issue fee.
- (B) The time period set for the payment of the issue fee is statutory and cannot be extended. However, if payment is not timely made and the delay in making the payment is shown to be unavoidable, upon payment of a fee for delayed payment, it may be accepted as though no abandonment had occurred, but there will be a reduction on the patent term adjustment for the period of abandonment.
- (C) Upon written request, a person citing patents and printed publications to the Office that the person believes has a bearing on the patentability of a particular patent, may request that his or her name remain confidential.
- (D) To obtain benefit of priority based on an earlier filed U.S. patent application, an applicant in a later filed continuation application is not required to meet the conditions and requirements of 35 USC 120.
- (E) Each of statements (B) and (C) is true.

39. Applicant received a Final Rejection with a mail date of Tuesday, February 29, 2000. The Final Rejection set a 3 month shortened statutory period for reply. Applicant files an Amendment and a Notice of Appeal on Monday, March 27, 2000. The examiner indicates in an Advisory Action that the Amendment will be entered for appeal purposes, and how the individual rejection(s) set forth in the final Office action will be used to reject any added or amended claim(s). The mail date of the examiner's Advisory Action is Wednesday, May 31, 2000. In accordance with the USPTO rules and the procedures set forth in the MPEP, which of the following dates is the last date for filing a Brief on Appeal without an extension of time?

- (A) Saturday, May 27, 2000.
- (B) Monday, May 29, 2000 (a Federal holiday, Memorial Day).
- (C) Tuesday, May 30, 2000.
- (D) Wednesday, May 31, 2000.
- (E) Tuesday, August 29, 2000.

40. In accordance with USPTO rules and the procedure set forth in the MPEP, which one of the following is not required for a provisional application filed in the USPTO?

- (A) A specification.
- (B) A drawing as prescribed by 35 USC 113.
- (C) An application fee.
- (D) A claim.
- (E) A cover sheet complying with the rule.

41. A claim in a pending patent application is rejected under 35 USC 103(a) as being obvious over Barry in view of Foreman. The Barry reference is a U.S. Patent that was issued on an application filed before the date of the application in question. In accordance with USPTO rules and procedures set forth in the MPEP, which of the following arguments, if true, would overcome the rejection?

- (A) The Foreman reference is nonanalogous art, but the reference may be reasonably pertinent to Barry's endeavor to solving the particular problem with which Barry was concerned.
- (B) The rejection does not address a claimed limitation, and neither of the references teaches the claimed limitation.
- (C) The Barry patent issued after the filing date of the pending patent application.
- (D) The original specification states that the results achieved by the claimed invention are unexpected. (The statement is unsubstantiated by evidence).
- (E) The Foreman patent issued 105 years before the filing date of the pending patent application.

42. Which of the following practices or procedures may be employed in accordance with the USPTO rules and the procedures set forth in the MPEP to overcome a rejection properly based on 35 USC 102(e)?

- (A) Persuasively arguing that the claims are patentably distinguishable from the prior art.
- (B) Filing an affidavit or declaration under 37 CFR 1.132 showing that the reference invention is not by “another.”
- (C) Filing an affidavit or declaration under 37 CFR 1.131 showing prior invention, if the reference is not a U.S. patent that either claims the same invention or claims an obvious variation of the subject matter in the rejected claim(s).
- (D) (A) and (C).
- (E) (A), (B) and (C).

43. Regarding a power of attorney or authorization of agent in a patent application, which of the following is in accordance with the USPTO rules and the procedure set forth in the MPEP?

- (A) All notices and official letters for the patent owner or owners in a reexamination proceeding will be directed to the attorney or agent of record in the patent file at the address listed on the register of patent attorneys and agents.
- (B) Powers of attorney to firms submitted in applications filed in the year 2000 are recognized by the USPTO.
- (C) The associate attorney may appoint another attorney.
- (D) The filing and recording of an assignment will operate as a revocation of a power or authorization previously given.
- (E) Revocation of the power of the principal attorney or agent does not revoke powers granted by him or her to other attorneys or agents.

44. A claim in an application recites “[a] composition containing: (a) 35-55% polypropylene; and (b) 45-65% polyethylene.” The sole prior art reference describes, as the only relevant disclosure, a composition containing 34.9% polypropylene and 65.1% polyethylene. In accordance with USPTO rules and procedures set forth in the MPEP, the primary examiner should properly:

- (A) Indicate the claim allowable over the prior art because there is no teaching, motivation or suggestion to increase the amount of polypropylene from 34.9% to 35% and decrease the amount of polyethylene from 65.1% to 65%.
- (B) Reject the claim under 35 USC 102 as anticipated by the prior art reference.
- (C) Reject the claim under 35 USC 103 as obvious over the prior art reference.
- (D) Reject the claim alternatively under 35 USC 102 as anticipated by or under 35 USC 103 as obvious over the prior art reference.
- (E) None of the above.

45. An examiner's answer, mailed on January 2, 2003, contains a new ground of rejection in violation of 37 CFR 1.193(a)(2). If an amendment or new evidence is needed to overcome the new ground of rejection, what is the best course of action the appellant should take in accordance with the USPTO rules and the procedures set forth in the MPEP?

- (A) File a reply brief bringing the new ground of rejection to the attention of the Board of Patent Appeals and Interferences and pointing out that 37 CFR 1.193(a)(2) prohibits entry of the new ground of rejection.
- (B) File a timely petition pursuant to 37 CFR 1.181 seeking supervisory review of the examiner's entry of an impermissible new ground of rejection in the answer, after efforts to persuade the examiner to reopen prosecution or remove the new ground of rejection are unsuccessful.
- (C) File a reply brief arguing the merits of the new ground of rejection.
- (D) File an amendment or new evidence to overcome the new ground of rejection.
- (E) Ignore the new ground of rejection.

46. Practitioner Smith filed a utility patent application on January 5, 2001, with informal drawings. Upon review of the drawings, the USPTO concluded that the drawings were not in compliance with the 37 CFR 1.84(a)(1) and (k), and were not suitable for reproduction. In an Office communication, Smith was notified of the objection and given two months to correct the drawings so that the application can be forwarded to a Technology Center for examination. Which of the following complies with the USPTO rules and the procedures set forth in the MPEP for a complete *bona fide* attempt to advance the application to final action?

- (A) Smith timely files a response requesting that the objections to the drawings be held in abeyance until allowable subject matter is indicated.
- (B) Smith timely files a response requesting that the objections to the drawings be held in abeyance since the requirement increases up-front costs for the patent applicant, and the costs can be avoided if patentable subject matter is not found.
- (C) Smith timely files a response requesting that the objections to the drawings be held in abeyance until fourteen months from the earliest claimed priority date.
- (D) Smith timely files a response correcting the drawings to comply with 37 CFR 1.84(a)(1) and (k), and making them suitable for reproduction.
- (E) All of the above.

47. In accordance with USPTO rules and the procedures set forth in the MPEP, claims in a patent application may not contain:

- (A) chemical formulas.
- (B) mathematical equations.
- (C) drawings or flow diagrams.
- (D) only one sentence.
- (E) tables not necessary to conform with 35 USC 112.

48. In accordance with the USPTO rules and the procedures set forth in the MPEP, which of the following does not constitute probative evidence of commercial success to support a contention of non-obviousness?

- (A) In a utility case, gross sales figures accompanied by evidence as to market share.
- (B) In a utility case, gross sales figures accompanied by evidence as to the time period during which the product was sold.
- (C) In a utility case, gross sales figures accompanied by evidence as to what sales would normally be expected in the market.
- (D) In a utility case, gross sales figures accompanied by evidence of brand name recognition.
- (E) In a design case, evidence of commercial success clearly attributable to the design, and not to improved performance of the device.

49. An examiner has advanced a reasonable basis for questioning the adequacy of the enabling disclosure in the specification of your client's patent application, and has properly rejected all the claims in the application. The claims in the application are drawn to a computer program system. In accordance with the USPTO rules and the procedures set forth in the MPEP, the rejection should be overcome by submitting \_\_\_\_\_

- (A) factual evidence directed to the amount of time and effort and level of knowledge required for the practice of the invention from the disclosure alone.
- (B) arguments by you (counsel) alone, inasmuch as they can take the place of evidence in the record.
- (C) an affidavit under 37 CFR 1.132 by an affiant, who is more than a routineer in the art, submitting few facts to support his conclusions on the ultimate legal question of sufficiency, *i.e.*, that the system "could be constructed."
- (D) opinion evidence directed to the ultimate legal issue of enablement.
- (E) patents to show the state of the art for purposes of enablement where these patents have an issue date later than the effective filing date of the application under consideration.

50. Inventor files an application for a non-theoretical metal alloy. The application as originally filed contains the following Claim 1:

Claim 1. A metal alloy comprising at least 20% by volume of iron; at least 10% by volume of gallium, and at least 10% by volume of copper.

In accordance with the USPTO rules and the procedures set forth in the MPEP, which of the following claims would be properly held indefinite under 35 USC 112(2)?

- (A) Claim 2: The alloy of claim 1 containing 66% by volume of gallium and 14% by volume of copper.
- (B) Claim 2: The alloy of claim 1 containing at least 21% by volume of iron, 11% by volume of gallium, and 10.01% by volume of copper.
- (C) Claim 2: The alloy of claim 1 containing 20% by volume of iron, 10% by volume of gallium, and 10% by volume of copper.
- (D) Claim 2: The alloy of claim 1 containing 54% by volume of copper and 27% by volume of gallium.
- (E) Claim 2: The alloy of claim 1 containing at least 1% by volume of silver.

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