

Electronically Signing USPTO Papers: There's a Rule for That

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Ten years ago, on September 21, 2004, the USPTO implemented the portion of the 21st Century Strategic Plan permitting the use of electronic or mechanical signatures, called "S-signatures," on papers filed at the USPTO. Now a largely routine practice, the rule at [37 C.F.R. 1.4](#) governing the use of S-signatures deserves a revisit a decade later, even for seasoned patent professionals. For instance, do you know who must insert an S-signature on a paper? Or whether a random string of numbers can constitute an S-signature?

S-signatures are defined by 37 C.F.R. 1.4(d)(2) as "any signature made by electronic or mechanical means, and any other mode of making or applying a signature other than a handwritten signature as provided for in paragraph (d)(1) of this section." The statute, which is also discussed in [MPEP § 502.02](#), provides five main requirements of S-signatures.

1) Single forward slash marks

37 C.F.R. 1.4(d)(2) and 37 C.F.R. 1.4(d)(2)(i) require that the S-signature be inserted between forward slash marks. These forward slash marks must be single slash marks, as demonstrated by numerous [USPTO signature examples](#) provided when the 21st Century Strategic Plan was implemented and as clarified in a January 12, 2007 USPTO acceptable S-signatures memo.

2) Content between the slash marks

37 C.F.R. 1.4(d)(2)(i) requires that "[t]he S-signature must consist only of letters, or Arabic numerals, or both, with appropriate spaces and commas, periods, apostrophes, or hyphens for punctuation." Number signs are permissible in specific circumstances, as discussed below.

Note that the statute does not require that a person's S-signature be the person's name. Instead, the statute allows anything to constitute the S-signature, as long as the other requirements of 37 C.F.R. 1.4 are met. Indeed, the January 12, 2007 USPTO acceptable S-signatures memo and the USPTO signature examples acknowledge this open nature of the statute, with "Customer Number 555555" and "xxxxxOo12lklys" among the provided acceptable S-signature examples. Even a single letter or a single number can constitute a proper S-signature. The January 12, 2007 USPTO acceptable S-signatures memo further indicates that Office personnel reviewing S-signatures may not reject an S-signature based on the content of the S-signature if it complies with the statute's broad criteria and does not contain an offensive word or phrase in possible violation of the requirement of [37 C.F.R. 1.3](#) to conduct business with the USPTO with decorum and courtesy.

Despite the great flexibility allowed in the content of an S-signature, if the USPTO "has reasonable doubt as to the authenticity (veracity) of the signature," 37 C.F.R. 1.4(h) allows the Office to "require ratification, confirmation (which includes submission of a duplicate document but with a proper signature), or evidence of authenticity of a signature."

3) Name of the signer

The name of the signer must be provided, per 37 C.F.R. 1.4(d)(2)(iii), "in printed or typed form preferably immediately below or adjacent the S-signature" and be "[r]easonably specific enough so that the identity of the signer can be readily recognized."

4) Signer's registration number

Per 37 C.F.R. 1.4(d)(2)(i), patent practitioners signing by S-signature must provide their registration number "either as part of the S-signature, or immediately below or adjacent to the S-signature." Further,

37 C.F.R. 1.4(d)(2)(i) indicates that “[t]he number (#) character may be used only as part of the S-signature when appearing before a practitioner’s registration number; otherwise the number character may not be used in an S-signature.”

5) A person must insert his/her own S-signature

37 C.F.R. 1.4(d)(2)(i) requires that “the person signing the correspondence must insert his or her own S-signature.” It is unclear, however, how the USPTO can effectively monitor this requirement since it is usually impossible to determine from looking at a filed paper who inserted an electronic or mechanical signature appearing in the paper. The [USPTO’s 21st Century Strategic Plan Questions and Answers](#) further indicates that it is the USPTO’s belief that “a party placing a typed name on a form without the slash marks does not indicate an intent to sign the form, and the addition of slash marks by another around the typed name would not be proper as it would be changing the intent of the appearance of the typed name on the form.” It is also unclear how this practice could be effectively detected by the USPTO.

Additionally, 37 C.F.R. 1.4(d)(4)(ii) requires that “[t]he person inserting a signature under paragraph (d)(2) or (d)(3) of this section in a document submitted to the Office certifies that the inserted signature appearing in the document is his or her own signature.” The requirements of a signer certifying his/her own signature do not prevent a paralegal, secretary, etc. to electronically submit a paper to the USPTO that includes another person’s S-signature. Indeed, 37 C.F.R. 1.4(d)(4)(ii) specifically allows for such filing. The submitter, however, must “have a reasonable basis to believe that the person whose signature is present on the document was actually inserted by that person, and should retain evidence of authenticity of the signature.”

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