



# Department of Mines and Mineral Resources

Mineral Building, Fairgrounds

Phoenix, Arizona 85007

(602) 255-3791 Toll Free in Arizona - 1-800-446-4259

---

## PATENTING A MINING CLAIM

Circular 12, Revised January 1980

Before applying to the government of the United States for a patent to a mining claim, the owner should make sure that his claim is properly located and held; and that he has a mineral discovery on each and every claim for which patent is desired.

Prior to patenting a mining claim on public domain, the use of the claim is subject to the Multiple Surface Use Act of 1955, commonly known as Public Law 167. The law provides that any mining claim located under the mining laws of the United States after the act became effective July 23, 1955, shall not be used, prior to issuance of a patent, for any purpose other than prospecting, mining, or processing operations and uses reasonably incident thereto. Except for the minerals in a deposit, prior to patenting, the claim is subject to the right of the United States to manage and dispose of the surface resources.

Following are excerpts from Federal Regulations relating to patent applications:

*"The (lode claim patent) application should contain a full description of the kind and character of the vein or lode and should state whether ore has been extracted therefrom; and if so, in what amount and of what value. It should also show the precise place within the limits of each of the locations embraced in the application where the vein or lode has been exposed or discovered and the width thereof. The showing in these regards should contain sufficient data to enable representatives of the government to confirm the same by examination in the field and also enable the Bureau of Land Management to determine whether a valuable deposit of mineral actually exists within the limits of each of the locations embraced in the application.*

*In placer applications, in addition to the recitals necessary in and to both vein or lode and placer applications, the placer application should contain, in detail, such data as*

will support the claim that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation and that title is sought not to control water courses or to obtain valuable timber but in good faith because of the mineral therein."

Prior to recent years, federal courts held that the mineral discovery necessary for a valid mining claim should be such that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. More recently, the Department of Interior has applied a "test of marketability". It now appears that the Department requires that the mineral discovery necessary to the validity of a claim must be such that the mineral is capable of being mined and sold at a profit. The small miner seldom can afford to argue the matter before a court. Therefore, he should have available a report on the claim by a reputable, independent mining engineer or geologist, together with whatever drill hole logs, sample, and shipment assays and other data, maps, or other evidences of valuable discoveries on the claim, that he can possibly obtain; and he should have the report and data cover each and every claim he seeks to patent.

He also must be prepared to prove that ". . . not less than \$500 worth of labor has been expended or improvement made upon the claim by himself or grantors; . . ." If patent is sought for a contiguous group of claims held in common, an amount equal to \$500 per claim may be spent in one or more claims for the benefit of the entire group, to satisfy the requirement.

Before he gets a patent the owner will be required to prove ownership and U.S. citizenship. His complete chain of title should be of record, and a careful land status examination should be made before he makes a patent application.

One may try to act on his own behalf in patent proceedings but it is unwise to do so. It is advisable to be represented by an attorney who is authorized to practice before the Interior Department. A lawyer admitted to practice before the courts of Arizona is so authorized.

Patent costs vary widely. It is not possible to calculate typical prices. In addition, if a patent application were contested and hearings and possibly court action resulted, additional costs could become heavy.

One may obtain from the Bureau of Land Management (BLM), 3707 N. 7th St., Siete Square, P.O. Box 16563, Phoenix, 85011, a copy of their Circular No. 2289, Regulations Pertaining to Mining Claims under the General Mining Laws of 1872. The land office personnel is prepared to assist claim owners so far as possible and will furnish an application blank for a mineral survey and a list of bonded surveyors.

Following is an outline of the principal steps to be taken by a claimant in seeking a patent to a lode claim in Arizona. For details, consult the Bureau circular mentioned above.

- 1. Apply to the State Director, Bureau of Land Management, 3707 N. 7th St., Siete Square, Phoenix 85014 for authorization of survey of the claim.
- 2. After receipt of the official order-for-survey, employ one of the bonded mineral surveyors appointed and listed by the state director. The surveyor's charges will vary with the number of claims, claim conflicts, and mine workings; and with the accessibility, topography, and other surveying conditions. Deposit is required for the cost of office work by the Bureau, including platting and copies of plats and field notes. Placer claims do not require a mineral survey if they are located upon surveyed lands and conform to the rectangular subdivision thereof, but the claimant must take on the work of reporting certain details as required by the regulations for placer patent applications, set forth in the BLM Circular No. 2289.
- 3. After the survey has been completed, the surveyor must file the required copies of his field notes and his plat with the cadastral engineer at Phoenix. After the cadastral engineer approves the field notes and makes the official plat, a copy of the plat together with a notice of intention to apply for patent, must be posted conspicuously on the claim. Proof of posting supported by "the statement of at least two credible

witnesses" and accompanied by two copies of the plat and the field notes is then filed with the land office manager, Bureau of Land Management, Phoenix, by claimant.

- 4. A formal patent application must then be filed by the claimant. It must include statements of: possessory right to the claim by virtue of his compliance with applicable mining laws and regulations; origin of possession; basis of claim to patent; description of lode; amount and value of ore extracted; and other statements required by applicable regulations, including one whether or not the claimant has had any part in the development of the atomic bomb project, and if he had, whether or not he acquired certain information about fissionable source materials in the lands applied for. Details of statements required from applicants for placer claim or mill site patents are given in BLM Circular No. 2289. Each patent application must be supported by certification of title by a party authorized by State law and acceptable to the BLM. Proof of citizenship of patent applicants must be submitted. A \$25 service charge must be paid at the time of filing.
- 5. At this time or within the 60 day publication period, file with the land office manager, BLM, Phoenix, a certificate of the office cadastral engineer that the required \$500 per claim expenditure by the owner or grantor has been done.
- 6. Upon receipt of an acceptable patent application the BLM office manager will, at claimant's expense, publish notice of the application for 60 days. After the publication, claimant must furnish a sworn statement from the office of publication that the notice was duly posted; and his own statement that the plat and notice remained posted during the 60 day publication period.
- 7. File application to purchase and pay the purchase price of \$5.00 per acre for lode claims. (\$2.50 per acre for placer claims) Also file affidavit that all charges have been paid. If the application is approved and there are no pending adverse suits, contests or protests, a patent will be issued.

A great many patent applications are protested by a government department or an individual. Required procedures in such cases are set forth in the BLM Circular No. 2289.

Once started, one is required to proceed diligently with his patent application. If patent proceedings are suspended because of contests, claimants must resume their diligent pursuit when the contests are settled.

If you are not familiar with mining laws as they pertain to Arizona, the Arizona Department of Mines and Mineral Resources publishes "Laws and Regulations Governing Mineral Rights in Arizona" which is available from either ADMMR office.