(6) File a petition to the Commissioner.

The Examiner's last action on the merits should promptly be reviewed for possible petitionable error, since any petition not filed within 60 days from the action complained of may be dismissed as untimely. Rule 181(f). Matters of practice must be decided by petition to the Commissioner, not appeal. In re Maloy et al., (CCPA 1964) 328 F2d 933, 140 USPQ 599. Thus, the Examiner's refusal to enter an amendment or consider an affidavit is a procedural matter reviewable only by the Commissioner. Rule 181. In re Searles, (CCPA 1970) 422 F2d 431, 164 USPQ 623; Ex parte Selby, (POBA 1966) 153 USPQ 476.

Matters which are commonly the subject of petition to the Commissioner and are not subject to appeal include:

(a) prematureness of the final rejection. Ex parte Morris, (P.O. Dir. 1958) 159 USPQ 127; In re Intine, (POBA 1969) 162 USPQ 192; Ex parte Jeannet et al., (P.O. Dir. 1970) 173 USPQ 512.

(b) refusal to enter an amendment. In re Mindick et al., (CCPA 1967) 371 F2d 892, 152 USPQ 566.

(c) refusal to consider verified evidence submitted after final rejection. Ex parte Selby, (POBA 1966) 153 USPQ 476.

(d) a restriction requirement. Ex parte Logothesis, (P.O. Dir. 1964) 163 USPQ 318; Ex parte Glass et al., (POBA 1966) 155 USPQ 531. Such matters are referred to the Group Director for decision. Rule 181(g); MPEP 1002.02; 1003; In re Intine, supra, 162 USPQ 192.

(e) refusal to follow a prior decision of the Board of Appeals. Ex parte Barley, (POBA 1957) 116 USPQ 592.

(f) objections to the specification. Ex parte Klager, (POBA 1959) 132 USPQ 203; In re Newton, (CCPA 1969) 414 F2d 1400, 163 USPQ 34; Ex parte Kronenthal, (POBA 1968) 163 USPQ 572.