

Instructions for Form AIA/02

Substitute Statement in Lieu of an Oath or Declaration for Utility or Design Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64)

This substitute statement form may be submitted only where the inventor for whom it is being submitted is deceased, legally incapacitated, cannot be found or reached after diligent effort, or has refused to execute the oath or declaration. The party who is signing the substitute statement must be an applicant under 37 CFR 1.43, 1.45, or 1.46. Where more than one party is identified as the applicant, all of the parties will likely need to sign a substitute statement for the non-signing inventor. See discussion below.

These instructions track the various boxes and information items that must be supplied to complete the form.

Title of Invention: Print or type the title of the invention as identified on the first page of your patent application specification.

This statement is directed to: For the two check boxes, check only one box. Check the first box if the substitute statement is being submitted with the patent application at the time of filing or on the same day. Check the second box if the substitute statement is being submitted after the patent application has already been filed, and print or type the application number on the first line and the application filing date on the second line. Note: When filing the substitute statement after the application has been filed, the application number and filing date must be inserted before the substitute statement is signed.

Legal Name of inventor to whom this substitute statement applies:

- **Given Name:** Print or type the legal name (*e.g.*, Given Name (first and middle (if any)) and Family Name or Surname) of the inventor to whom this substitute statement applies.
- **Residence (except for a deceased or legally incapacitated inventor):** Print or type the city, state, and country (for a U.S. resident), or the city and foreign country (for a non-U.S. resident), where the inventor to whom this substitute statement applies resides.

Mailing address (except for a deceased or legally incapacitated inventor): Print or type the address where the inventor to whom this substitute statement applies customarily receives mail (e.g., home address, business address, post office box). **Relationship to the inventor to whom this substitute statement applies:**

For the five check boxes, check only one box.

- **Legal Representative (for deceased or legally incapacitated inventor only):**
Check this box if the legal representative (e.g., executor, administrator, heir) is signing the substitute statement for a deceased or legally incapacitated inventor. The legal representative must be an applicant, and should be identified as an applicant in an application data sheet (Form AIA/14). **Note:** If a substitute statement executed by a legal representative is filed in the application and the legal representative is not already identified as an applicant, the Office will recognize the legal representative as an applicant, either in addition to the 37 CFR 1.46 applicant (e.g., assignee), or in place of the deceased or legal incapacitated inventor who was named previously as an applicant. If the 37 CFR 1.46 applicant is the assignee or obligated assignee of the deceased or legally incapacitated inventor's interest, there is no need to involve the legal representative as the 37 CFR 1.46 applicant can and should sign the substitute statement.
- **Assignee:** Check this box if the assignee who was named as the applicant in an application data sheet (Form AIA/14) is signing the substitute statement on behalf of an inventor who is deceased, legally incapacitated, cannot be found or reached after diligent effort, or has refused to execute the oath or declaration. An assignee is a party who has an actual assignment document in which the owner assigned to the party executing the substitute statement all or part of its right, title, and interest in the patent application.
- **Person to whom the inventor is under an obligation to assign:** Check this box if the obligated assignee who was named as the applicant in an application data sheet (Form AIA/14) is signing the substitute statement on behalf of an inventor who is deceased, legally incapacitated, cannot be found or reached after diligent effort, or has refused to execute the oath or declaration. An obligated assignee is a party to whom the owner is under an obligation to assign (e.g., such as in an employment agreement) all or part of its right, title, and interest in the patent application.
- **Person who otherwise shows a sufficient proprietary interest in the matter:**
Check this box if a person who otherwise shows a sufficient proprietary interest in the matter who was named as the applicant in an application data sheet (Form AIA/14) is signing the substitute statement on behalf of an inventor who is deceased, legally incapacitated, cannot be found or reached after diligent effort, or has refused to

execute the oath or declaration. A person who otherwise shows a sufficient proprietary interest must file a petition under 37 CFR 1.46 to be recognized as the applicant. Sufficient proprietary interest may be demonstrated by an appropriate legal memorandum as discussed in the Manual of Patent Examining Procedure (MPEP), section 409.03(f).

- **Joint Inventor:** Check this box if a joint inventor is signing the substitute statement on behalf of an inventor who cannot be found or reached after diligent effort, or has refused to execute an oath or declaration. Note: All of the inventors who are signing oaths or declarations and who are identified as the applicant must sign a substitute statement on behalf of the inventor who cannot be found or reached or has refused to sign the oath or declaration. A joint inventor may not sign a substitute statement on behalf of a deceased or legally incapacitated inventor. The legal representative would need to sign the substitute statement on behalf of a deceased or legally incapacitated inventor, unless an assignee, obligated assignee, or party who otherwise shows sufficient proprietary interest is signing the substitute statement.

Note Regarding Multiple 37 CFR 1.46 Parties Named as Applicant: Where more than one party is named as the applicant under 37 CFR 1.46, but a non-signing inventor has only assigned or is under an obligation to assign his or her rights to one of the parties and not the other(s), **all 37 CFR 1.46 applicant parties** must execute a substitute statement for the non-signing inventor. 35 U.S.C. 115(d)(1) specifies that “the applicant for patent” must execute the substitute statement. The 37 CFR 1.46 applicant who is not the assignee or obligated assignee of the non-signing inventor’s interest may modify the relationship information on the substitute statement (Form AIA/14 or equivalent) to make clear that a co-applicant is the party to whom the inventor assigned or is under an obligation to assign. Examples:

- “(Co-Applicant with Assignee of inventor’s interest Company X.)”
- “To the best of my knowledge and belief, Company X is the obligated assignee and [we] are an applicant in this application with them.
- On information and belief, the co-applicant for patent, Company X, is the assignee of inventor [x]’s interest.

Circumstances permitting execution of this substitute statement: For the four check boxes, check only one box. This section identifies the permitted basis for the substitute statement, namely, that the inventor is deceased, is legally incapacitated, cannot be found or reached after diligent effort, or has refused to execute the oath or declaration.

If there are joint inventors, please check the appropriate box: For the two check boxes, check only one box. Check the first box if an application data sheet (ADS) (Form AIA/14) naming the entire inventive entity has been or is currently being submitted. Check the second box if an application data sheet (ADS) (Form AIA/14) has not been submitted, and the Substitute

Statement Supplemental Sheet (Form AIA/11) naming the entire inventive entity and providing inventor information is attached.

Person Executing This Substitute Statement:

- **Name:** Print or type the legal name (*e.g.*, Given Name (first and middle (if any)) and Family Name or Surname) of the person signing the substitute statement.
- **Date (Optional):** Print or type the date that the person identified on the Name line signs the substitute statement. The person signing the substitute statement is not required to date the statement. Hence, the date is indicated as “optional.” However, the Office recommends providing a date.
- **Signature:** The person identified on the Name line should sign the substitute statement form. The substitute statement may be signed with a handwritten signature in dark ink (37 CFR 1.4(d)(1)) or with an “S-signature” (a typed signature between forward slashes, 37 CFR 1.4(d)(2)).
- **Residence:** Print or type the city, state, and country (for a U.S. resident), or the city and foreign country (for a non-U.S. resident), of the person who is signing the substitute statement. Where the applicant is a juristic entity, the residence of the juristic entity should be provided.
- **Mailing Address:** Print or type the address where the person who is signing the substitute statement customarily receives mail (*e.g.*, home address, business address, post office box). Where the applicant is a juristic entity, the mailing address of the juristic entity should be provided.

Use a new Form AIA/02 for each additional inventor who is deceased, legally incapacitated, cannot be found or reached after diligent effort, or has refused to execute the oath or declaration. If the substitute statement is being signed by two or more joint inventors on behalf of an inventor who cannot be found or reached after diligent effort or who has refused to execute the oath or declaration, Form AIA/11 may be used in conjunction with Form AIA/02. If there is more than one 37 CFR 1.46 party named as the applicant, each party must sign a substitute statement for the non-signing inventor.