

mm 128-track magnetic tape cartridges—DLT 4 format.

ISO/IEC 15896:1999, First edition, December 15, 1999, Information technology—Data interchange on 12.7 mm 208-track magnetic tape cartridges—DLT 5 format.

ISO/IEC 16382:2000, First edition, May 15, 2000, Information technology—Data interchange on 12.7 mm 208-track magnetic tape cartridges—DLT 6 format.

\* \* \* \* \*

Dated: October 25, 2002.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 02-32818 Filed 12-27-02; 8:45 am]

BILLING CODE 7515-01-P

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

#### 37 CFR Parts 1, 2 and 3

[Docket No. 2003-T-005]

RIN 0651-AB58

#### Correspondence With the United States Patent and Trademark Office

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Final rule; Technical Corrections Act of 2002 Rules Change.

**SUMMARY:** The United States Patent and Trademark Office (“USPTO”) is revising its rules of practice to simplify the requirements for: (1) Filing an application for registration based on a foreign registration under 15 U.S.C. 1126(e); and (2) designation of a domestic representative by a party who is not domiciled in the United States. These changes implement the changes to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, made by the Technical Corrections in Trademark Law Act, title III, subtitle B, sec. 13207 of Pub. L. 107-273, 116 Stat. 1758. The USPTO is also making some minor technical corrections to the rules of practice.

**EFFECTIVE DATE:** December 30, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Mary E. Hannon, Office of the Commissioner for Trademarks, by telephone at (703) 308-8910, extension 137, by e-mail at [mary.hannon@uspto.gov](mailto:mary.hannon@uspto.gov), or by facsimile at (703) 872-9280.

**SUPPLEMENTARY INFORMATION:** The Technical Corrections in Trademark Law Act of 2002, Pub. L. 107-273, 116 Stat. 1758 (“Technical Corrections Act”), amended section 44(e) of the Trademark Act, 15 U.S.C. 1126(e), to

eliminate the requirement that a foreign applicant who seeks registration in the United States based on a registration in the applicant’s home country (country of origin) submit a certification or certified copy of the foreign registration. As amended, section 44(e) requires that the applicant submit “a true copy, a photocopy, a certification, or a certified copy of the registration in the country of origin of the applicant.”

The Technical Corrections Act also amended sections 1(e), 8(f), 9(c), and 10 of the Trademark Act, 15 U.S.C. 1051(e), 1058(f), 1059(c) and 1060, to eliminate the requirement that an applicant or registrant who is not domiciled in the United States designate the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark (“domestic representative”). As amended, these sections provide that the applicant or registrant “may” designate a domestic representative, and that if the applicant or registrant does not designate a domestic representative (or if the person designated cannot be found at the address in the designation), then notices or process in proceedings affecting the mark may be served on the Director of the USPTO (“Director”). In other words, the designation of a domestic representative in trademark proceedings is now optional, not mandatory.

The Technical Corrections Act is effective November 2, 2002.

#### Discussion of Specific Rules

The USPTO is amending rules 1.4(d)(1)(iii)(A), 2.6(b)(8), 2.18, 2.24, 2.33(b)(2), 2.34, 2.119(d), 2.161(h), 2.183, 3.31(a), and 3.61.

Section 1.4(d)(1)(iii)(A) is amended to delete the requirement that a party who signs a trademark document electronically print, sign, date and maintain a paper copy of the electronic submission. It is burdensome and inefficient for parties who file electronically to maintain both paper and electronic records of the filings. Paper records are unnecessary because electronic records would be sufficient proof of filing if a document filed electronically were to become lost within the USPTO.

Section 2.6(b)(8) is amended to delete “T-Search” in both places in which it appears, and substitute “X-Search.”

This merely updates the references to the USPTO’s electronic search system.

Section 2.18 is amended to provide that if an applicant, registrant or party to a proceeding who does not reside in the United States has not appointed a domestic representative and the application or proceeding is not being

prosecuted by an attorney, the USPTO will send correspondence directly to the applicant, registrant or party, unless the applicant, registrant or party has designated a different address to which correspondence should be sent. The rule previously stated that the USPTO would send correspondence to the domestic representative unless the application was being prosecuted by an attorney, in which case the USPTO would send correspondence to the attorney. The amendment is necessary because designation of a domestic representative is no longer mandatory.

Section 2.24 is amended to provide that an applicant not residing in the United States may designate a domestic representative, and that if the applicant does not designate a domestic representative (or if the person designated cannot be found at the address given in the designation), then notices or process in proceedings affecting the mark may be served on the Director of the USPTO. This incorporates the amendment of 15 U.S.C. 1051(e), and 1060.

Section 2.33(b)(2) is amended to require that an application under 15 U.S.C. 1051(b) or 15 U.S.C. 1126 include an allegation that the applicant believes it is entitled to use the mark “in commerce”. This corrects an oversight in the rule (which previously omitted the language “in commerce”), and makes it consistent with 15 U.S.C. 1051(b)(3)(A), which requires an allegation that the applicant believes itself “to be entitled to use the mark in commerce”. This amendment does not change current practice.

Section 2.34(a)(2)(i) is amended to provide that in an application based on the applicant’s bona fide intention to use the mark in commerce under 15 U.S.C. 1051(b), the “applicant” must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. The rule previously required verification by the “trademark owner”, but this was inconsistent with 15 U.S.C. 1051(b)(3), which requires verification by the “applicant”. An intent-to-use applicant who has not yet used a mark in commerce is not the “owner” of the mark. This amendment does not change current practice.

Section 2.34(a)(3)(i) is amended to provide that in an application based on registration of a mark in a foreign applicant’s country of origin under 15 U.S.C. 1126(e), the “applicant” must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. The rule

previously required verification by the "trademark owner". This amendment is consistent with § 2.33 and does not change current practice.

Section 2.34(a)(3)(ii) is amended to provide that an application for registration of a mark based on a foreign registration under 15 U.S.C. 1126(e) must include a "true copy, photocopy, certification, or certified copy" of a registration in the applicant's country of origin. This incorporates the amendment of 15 U.S.C. 1126(e), which now permits submission of a photocopy of a foreign registration. Previously, the rule required a certification or certified copy of the foreign registration.

Section 2.34(a)(3)(iii) is amended to provide that in an application for registration of a mark based on a foreign registration under 15 U.S.C. 1126(e), if the record indicates that the foreign registration will expire before the United States registration will issue, the applicant must submit a true copy, photocopy, certification, or certified copy from the country of origin showing that the foreign registration has been renewed and is still in force. This incorporates the amendment of 15 U.S.C. 1126(e). Previously, the rule required a certification or certified copy showing that the foreign registration had been renewed.

Section 2.34(a)(4)(ii) is amended to provide that in an application based on an earlier-filed foreign application under 15 U.S.C. 1126(d), the "applicant" must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. The rule previously required verification by the "trademark owner." This amendment is consistent with § 2.33 and does not change current practice.

Section 2.119(d) is amended to provide that if a party to an inter partes proceeding who does not reside in the United States has appointed a domestic representative, the USPTO will send correspondence to the domestic representative unless the proceeding is being prosecuted by an attorney at law, in which case the USPTO will send correspondence to the attorney; and that if the party has not appointed a domestic representative and the proceeding is not being prosecuted by an attorney, the USPTO will send correspondence directly to the party. The rule previously stated that the USPTO would send correspondence to the domestic representative unless the application was being prosecuted by an attorney, in which case the USPTO would send correspondence to the attorney. The amendment is necessary

because designation of a domestic representative is no longer mandatory.

Section 2.161 is amended by deleting paragraph (h), which required that an affidavit of continued use or excusable nonuse under 15 U.S.C. 1058 include a designation of domestic representative if the registrant is not domiciled in the United States. This incorporates the amendment of 15 U.S.C. 1058(f), which makes the designation of domestic representative optional.

Section 2.183 is amended by deleting paragraph (d), which required that a renewal application under 15 U.S.C. 1059 include a designation of domestic representative if the registrant is not domiciled in the United States, and by redesignating paragraphs (e) and (f) as paragraphs (d) and (e). This incorporates the amendment of 15 U.S.C. 1059(c), which makes the designation of domestic representative optional.

Section 3.31 is amended by deleting paragraph (a)(7), which required that a trademark cover sheet under § 3.28 include an indication that an assignee who is not domiciled in the United States had designated a domestic representative, and by redesignating paragraph (a)(8) as paragraph (a)(7). This incorporates the amendment of 15 U.S.C. 1060, which makes the designation of domestic representative optional.

Section 3.61 is amended to provide that the assignee of a trademark application or registration who does not reside in the United States "may" designate a domestic representative. This incorporates the amendment of 15 U.S.C. 1060. The rule previously provided that an assignee who does not reside in the United States "must" designate a domestic representative.

#### *Administrative Procedure Act*

This final rule merely involves rules of agency practice and procedure within the meaning of 5 U.S.C. 553(b)(A), as the amendments merely incorporate changes to the statute enacted by the Technical Corrections Act, Public Law 107-273, 116 Stat. 1758, which simplify or eliminate existing procedural requirements. Therefore, this final rule may be adopted without prior notice and opportunity for public comment under 5 U.S.C. 553(b) and (c), or thirty-day advance publication under 5 U.S.C. 553(d).

#### *Regulatory Flexibility Act*

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), a regulatory flexibility analysis under the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*) is not required. See 5 U.S.C. 603 and 604.

#### *Executive Order 13132*

This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

#### *Executive Order 12866*

This rule making has been determined not to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

#### *Paperwork Reduction Act*

This rule making does not create any information collection requirements under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*); however, this rule making does contain information collection requirements subject to the PRA. This final rule eliminates the requirement to maintain a paper copy of an application that has been filed electronically. This rule also eliminates the requirement that applicants or registrants who are not domiciled in the United States must designate the name and address of a person resident in the United States on whom may be served notice or process in proceedings affecting the mark ("domestic representative"). The designation of a domestic representative is now an optional requirement. These requirements have been previously submitted to OMB for review and approval under OMB Control Number 0651-0009. The USPTO will update 0651-0009 to reflect the change in the record keeping requirements associated with the amendment of section 1.4(d)(1)(iii)(A) and any possible burden changes associated with the optional designation of a domestic representative. The public reporting burden for these requirements averages three minutes, including the time for reviewing instructions and gathering the information. Send comments regarding this burden estimate to Mary E. Hannon, Office of the Commissioner for Trademarks, by telephone at (703) 308-8910, extension 137, by e-mail at [mary.hannon@uspto.gov](mailto:mary.hannon@uspto.gov), or by facsimile at (703) 872-9280 or to the OMB Office of Information and Regulatory Affairs, New Executive Office Bldg., 725 17th Street, NW., Washington, DC 20230 (Attn: USPTO Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of

information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Trademarks.

37 CFR Part 2

Administrative practice and procedure, Trademarks.

37 CFR Part 3

Administrative practice and procedure, Trademarks, Assignments.

For the reasons given in the preamble and under the authority contained in 35 U.S.C. 2 and 15 U.S.C. 1123, as amended, the USPTO is amending parts 1, 2 and 3 of title 37 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Amend § 1.4 by revising paragraph (d)(1)(iii)(A) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

\* \* \* \* \*

- (d) \* \* \*
(1) \* \* \*
(iii) \* \* \*

(A) Place a symbol comprised of numbers and/or letters between two forward slash marks in the signature block on the electronic submission; or

\* \* \* \* \*

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

3. The authority citation for 37 CFR Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

4. Amend § 2.6 by revising paragraph (b)(8) to read as follows:

§ 2.6 Trademark fees.

\* \* \* \* \*

- (b) \* \* \*

(8) Marginal cost, paid in advance, for each hour of terminal session time, including print time, using X-Search capabilities, prorated for the actual time used. The Director may waive the payment by an individual for access to X-Search upon a showing of need or hardship, and if such waiver is in the public interest \$40.00

\* \* \* \* \*

5. Revise § 2.18 to read as follows:

§ 2.18 Correspondence, with whom held.

If papers are transmitted by an attorney at law, or a written power of attorney is filed, the United States Patent and Trademark Office will send correspondence to the attorney at law transmitting the papers, or to the attorney at law designated in the power of attorney. If an application or proceeding is not being prosecuted by an attorney at law, and the applicant, registrant or party to a proceeding before the Office has appointed a domestic representative, unless the applicant, registrant or party designates in writing another address to which correspondence is to be sent. If the application or proceeding is not being prosecuted by an attorney and the applicant, registrant or party has not designated a domestic representative, the Office will send correspondence directly to the applicant, registrant or party, unless the applicant, registrant or party designates in writing another address to which correspondence is to be sent. Correspondence will continue to be sent to such address until the applicant, registrant or party, or the attorney or other authorized representative of the applicant, registrant or party, indicates in writing that correspondence is to be sent to another address. The Office will not undertake double correspondence, and if more than one attorney at law or other authorized representative appears or signs a paper, the Office's reply will be sent to the address already established in the record until another correspondence address is specified by the applicant, registrant or party or by the attorney or other authorized representative of the applicant, registrant or party.

6. Revise § 2.24 and its heading to read as follows:

§ 2.24 Designation of domestic representative by foreign applicant.

If an applicant is not domiciled in the United States, the applicant may designate by a document filed in the United States Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. If the applicant does not file a document designating the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, or if the last person designated cannot be found at the address given in the designation, then notices or process in proceedings affecting the mark may be

served on the Director. The mere designation of a domestic representative does not authorize the person designated to prosecute the application unless qualified under paragraph (a), (b) or (c) of § 10.14 of this subchapter and authorized under § 2.17(b).

7. Amend § 2.33 by revising paragraph (b)(2) to read as follows:

§ 2.33 Verified statement.

\* \* \* \* \*

- (b) \* \* \*

(2) In an application under section 1(b) or section 44 of the Act, the verified statement must allege:

That the applicant has a bona fide intention to use the mark shown in the accompanying drawing in commerce on or in connection with the specified goods or services; that the applicant believes it is entitled to use the mark in commerce; that to the best of the declarant's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of the other person, to cause confusion or mistake, or to deceive; and that the facts set forth in the application are true.

\* \* \* \* \*

8. Amend § 2.34 by revising paragraphs (a)(2)(i), (a)(3)(i), (a)(3)(ii), (a)(3)(iii), and (a)(4)(ii) to read as follows:

§ 2.34 Bases for filing.

- (a) \* \* \*
(2) \* \* \*

(i) In an application under section 1(b) of the Act, the applicant must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

\* \* \* \* \*

- (3) \* \* \*

(i) The applicant's verified statement that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

(ii) A true copy, a photocopy, a certification, or a certified copy of a registration in the applicant's country of origin showing that the mark has been

registered in that country, and that the registration is in full force and effect. The certification or copy of the foreign registration must show the name of the owner, the mark, and the goods or services for which the mark is registered. If the foreign registration is not in the English language, the applicant must submit a translation.

(iii) If the record indicates that the foreign registration will expire before the United States registration will issue, the applicant must submit a true copy, a photocopy, a certification, or a certified copy from the country of origin to establish that the foreign registration has been renewed and will be in force at the time the United States registration will issue. If the foreign registration is not in the English language, the applicant must submit a translation.

\* \* \* \* \*

(4) \* \* \*

(ii) The applicant's verified statement that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

\* \* \* \* \*

9. Amend § 2.119 by revising paragraph (d) to read as follows:

**§ 2.119 Service and signing of papers.**

\* \* \* \* \*

(d) If a party to an inter partes proceeding is not domiciled in the United States and is not represented by an attorney or other authorized representative located in the United States, the party may designate by document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in the proceeding. If the party has appointed a domestic representative, official communications of the United States Patent and Trademark Office will be addressed to the domestic representative unless the proceeding is being prosecuted by an attorney at law or other qualified person duly authorized under § 10.14(c) of this subchapter. If the party has not appointed a domestic representative and the proceeding is not being prosecuted by an attorney at law or other qualified person, the Office will send correspondence directly to the party, unless the party designates in writing another address to which correspondence is to be sent. The mere designation of a domestic representative

does not authorize the person designated to prosecute the proceeding unless qualified under § 10.14(a), or qualified under § 10.14(b) and authorized under § 2.17(b).

\* \* \* \* \*

10. Amend § 2.161 by removing paragraph (h), and by revising paragraph (g)(2) to read as follows:

\* \* \* \* \*

(g) \* \* \*

(2) Be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen exceeds these size requirements (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (*i.e.*, is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper.

11. Amend § 2.183 by removing paragraph (d); and redesignating paragraphs (e) and (f) as (d) and (e).

**PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE**

12. The authority citation for 37 CFR part 3 continues to read as follows:

**Authority:** 15 U.S.C. 1123; 35 U.S.C. 2(b)(2).

13. Amend § 3.31 by removing paragraph (a)(7) and redesignating paragraph (a)(8) as paragraph (a)(7).

14. Revise § 3.61 to read as follows:

**§ 3.61 Domestic representative.**

If the assignee of a patent, patent application, trademark application or trademark registration is not domiciled in the United States, the assignee may designate a domestic representative in a document filed in the United States Patent and Trademark Office. The designation should state the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the application, patent or registration or rights thereunder.

Dated: December 20, 2002.

**James E. Rogan,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 02-32801 Filed 12-27-02; 8:45 am]

**BILLING CODE 3510-16-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[KY 125-2-200308(a); FRL-7430-9]

**Approval and Promulgation of Implementation Plans for Kentucky: Air Permit Regulations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving revisions to the State Implementation Plan (SIP) of the Commonwealth of Kentucky which separate rule 401 KAR 50:035 into several rules based on the type of air permit, and renumber and rewrite in plain English rule 401 KAR 50:032 and the resulting rules from 401 KAR 50:035. The EPA is also removing 401 KAR 50:030 from the Kentucky SIP and correcting typographical errors in a separate, related action addressing rule 401 KAR 52:080, "Regulatory limit on potential to emit."

**DATES:** This direct final rule is effective February 28, 2003 without further notice, unless EPA receives adverse comment by January 29, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** All comments should be addressed to: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. (404/562-9031 (phone) or [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov) (e-mail).)

Copies of the Commonwealth's submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. (Michele Notarianni, 404/562-9031, [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov))  
Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601-1403. (502/573-3382)

**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni at the address listed above or 404/562-9031 (phone) or [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov) (e-mail).

**SUPPLEMENTARY INFORMATION:**

**I. Today's Action**

The EPA is approving revisions to the State Implementation Plan (SIP) of the Commonwealth of Kentucky submitted on March 15, 2001. These revisions