

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 991008272-9272-01]

RIN 0651-AB07

Changes To Permit Payment of Patent and Trademark Office Fees by Credit Card

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (Office) is proposing to amend the rules of practice to provide for the payment of any patent or trademark fee by credit card. The Office previously limited payment by credit card to the fees required for information products or for an electronic submission with or in a trademark application. The Office is proposing to accept payment of any patent fee, trademark fee, or information product fee by credit card.

DATES: *Comment Deadline Date:* To be assured of consideration, written comments must be received on or before December 3, 1999. While comments may be submitted after this date, the Office cannot ensure that consideration will be given to such comments. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: ccard.comments@uspto.gov. Comments may also be submitted by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, D.C. 20231, or by facsimile to (703) 308-6916, marked to the attention of Robert W. Bahr. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Special Program Law Office, Office of the Deputy Assistant Commissioner for Patent Policy and Projects, located at Room 3-C23 of Crystal Plaza 4, 2201 South Clark Place, Arlington, Virginia, 22202, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: <ftp.uspto.gov>). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT:

Concerning this proposed rule change: Robert W. Bahr, by telephone at (703) 305-9285, or by facsimile to (703) 308-6916 marked to the attention of Robert W. Bahr.

Concerning the payment of fees (by credit card or otherwise) in general: Matthew Lee, by telephone at (703) 305-8051, by e-mail at matthew.lee@uspto.gov, or by facsimile at (703) 305-8007 marked to the attention of Matthew Lee.

SUPPLEMENTARY INFORMATION: Patent and Trademark Office (Office) practice has been to accept payment of fees for information products by credit card, but not to accept patent fees or trademark fees by credit card. The Office recently revised 37 CFR 1.23 to expressly permit payment of money for fees "in an electronically filed trademark application or electronic submission in a trademark application." See *Trademark Law Treaty Implementation Act Changes*, Final Rule Notice, 64 FR 48989, 48917 (September 8, 1999), 1226 *Off. Gaz. Pat. Office* 103, 120 (September 23, 1999). As explained in that final rule notice:

Section 1.23 is also amended to add a paragraph (b), providing that payments of money for fees in electronically filed trademark applications, or electronic submissions in trademark applications, may also be made by credit card. The Office previously limited fee payment by credit card to the fees required for information products, and will continue to accept payment of information product fees by credit card.

Section 1.23(b) will also provide that payment of a fee by credit card must specify the amount to be charged and such other information as is necessary to process the charge, and is subject to collection of the fee.

Section 1.23(b) will further provide that the Office will not accept a general authorization to charge fees to a credit card. The Office cannot accept an authorization to charge "all required fees" or "the filing fee" to a credit card, because the Office cannot determine with certainty the amount of an unspecified fee (the amount of the "required fee" or the applicable "filing fee") within the time frame for reporting a charge to the credit card company. Also, the Office cannot accept charges to credit cards that require the use of a personal identification number (PIN) (e.g., certain debit cards or check cards).

Section 1.23(b) also contains a warning that if credit card information is provided on a form or document other than a form provided by the Office for the payment of fees by credit card, the Office will not be liable if the credit card number is made public. The Office currently provides an electronic form for use when paying a fee in an electronically filed trademark application or electronic submission in a trademark application. This form will not be included in the records open to public inspection in the file of a trademark matter. However, the

inclusion of credit card information on forms or documents other than the electronic form provided by the Office may result in the release of credit card information.

See *Trademark Law Treaty Implementation Act Changes*, 64 FR at 48906-07, 1226 *Off. Gaz. Pat. Office* at 110. The Office is now proposing to revise the rules of practice to expressly accept payment of any patent fee, trademark fee, or information product fee by credit card, subject to actual collection of the fee.

The Office will provide a Credit Card Payment Form (PTO-2038) for use when paying a patent or trademark fee (or the fee for an information product) by credit card. The Office will not require customers to use this form when paying a patent or trademark fee by credit card. If, however, a customer provides a credit card charge authorization in another form or document (e.g., a communication relating to the patent or trademark), the credit card information may become part of the record of an Office file that is open to public inspection. Information concerning fees in general is posted on the Office's Web site at <http://www.uspto.gov>, and information on completing the Credit Card Payment Form will be posted on the Office's Web site.

The Office will not include the Credit Card Payment Form (PTO-2038) among the records open to public inspection in the file of a patent, trademark registration, or other proceeding. The Credit Card Payment Form (PTO-2038) is the only form the Office uses to collect credit card information and is the only form the Office will not make available to the public as part of the file of a patent, trademark, or other proceeding. As discussed above, failure to use the Credit Card Payment Form (PTO-2038) when submitting a credit card payment may result in your credit card information becoming part of the record of a Patent and Trademark Office file that is open to public inspection. If the cardholder includes a credit card number on any form or document other than the Credit Card Payment Form, the Patent and Trademark Office will not be liable in the event that the credit card number becomes public knowledge.

Discussion of Specific Rules: Title 37 of the Code of Federal Regulations, Part 1, is proposed to be amended as follows:

Section 1.21: Section 1.21(m) is proposed to be amended to make the \$50.00 fee for processing a check returned "unpaid" by a bank applicable to any payment refused or charged back by a financial institution. The burden of processing any payment refused or credit card transaction charged back by

a financial institution is the same as the burden of processing a check returned "unpaid" by a bank. The phrase "payment refused * * * by a financial institution" includes a check returned "unpaid" by a bank but also applies to the refusal by a financial institution of a payment by other means.

Section 1.23: Section 1.23(b) is proposed to be amended by revising the first sentence to eliminate the restriction that the payment of money required for Patent and Trademark Office fees by credit card be limited to fees "in an electronically filed trademark application or electronic submission in a trademark application."

Review under the Paperwork Reduction Act of 1995 and Other Considerations. This notice is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Order 12612 (October 26, 1987), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It has been determined that this rulemaking is not significant for the purposes of Executive Order 12866 (September 30, 1993).

This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Patent and Trademark Office has submitted an information collection package to OMB for its review and approval. The title, description, and respondent description for this information collection is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Patent and Trademark Office Fees.

Form Number: PTO-2038.

Type of Review: A new collection.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, state, local or tribal governments, and the Federal Government.

Estimated Number of Respondents: 100,000 responses per year.

Estimated Time Per Response: 12 minutes.

Estimated Total Annual Respondent Burden Hours: 20,000 hours per year.

Needs and Uses: Persons submitting fees to the Patent and Trademark Office need to provide information concerning the purpose for the fee so that the Patent and Trademark Office is able to: (1)

Apply the fee to the particular application, patent, trademark registration, or other proceeding, service or product; and (2) determine whether the person has submitted the fee(s) required by law or regulation. The Credit Card Form provides the public with a convenient manner of paying a patent application or service fee, trademark application or service fee, or information product fee by credit card.

Comments are invited on: (a) Whether the collection of information is necessary for proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding the burden estimate or any other aspects of the information requirements, including suggestions for reducing the burden, to Robert J. Spar, Director, Special Program Law Office, Patent and Trademark Office, Washington, D.C. 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, N.W., Room 10235, Washington, D.C. 20503, Attention: Desk Officer for the Patent and Trademark Office.

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.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes proposed in this notice if adopted would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The Office does not currently permit patent or trademark fees (except in an electronically filed trademark application or electronic submission in a trademark application) to be paid by credit card. The changes proposed in this notice if adopted would permit small entities as well as non-small entities the option of paying any patent or trademark fee by credit card. Small entities as well as non-small entities will continue to have the option of paying any patent or trademark fee by check, treasury note, money order, or charge to a deposit account. Based upon the number of small entities who pay fees to the Patent and Trademark Office

each year and the percentage of fee payments that are by credit card (where currently permitted), the Office expects 16,000 small entities to pay a patent or trademark fee by credit card each year. Thus, the changes proposed in this notice if adopted would not have a significant economic impact on any business.

This notice of proposed rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612 (October 26, 1987).

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.21 is amended by revising paragraph (m) to read as follows:

§ 1.21 Miscellaneous fees and charges.

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(m) For processing each payment refused (including a check returned "unpaid") or charged back by a financial institution— \$50.00

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3. Section 1.23 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 1.23 Method of payment.

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(b) Payments of money required for Patent and Trademark Office fees may also be made by credit card. * * *

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Dated: October 29, 1999.

Robert M. Anderson,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 99-28731 Filed 11-2-99; 8:45 am]

BILLING CODE 3510-16-P