

**DEPARTMENT OF COMMERCE****Patent and Trademark Office****37 CFR Parts 2 and 7**

[Docket No. 2005-T-056]

RIN 0651-AB88

**Requirements To Receive a Reduced Fee for Filing an Application Through the Trademark Electronic Application System****AGENCY:** United States Patent and Trademark Office, Commerce.**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (Office) is amending its rules to permit an applicant to pay a reduced fee under certain circumstances when the applicant uses the Trademark Electronic Application System (TEAS) to file a trademark or service mark application for registration on the Principal Register under section 1 and/or section 44 of the Trademark Act. The Office will offer a reduced fee to TEAS applicants if the application meets certain filing requirements beyond those required to receive a filing date. The applicant must also file communications regarding the application through TEAS, and agree to receive communications concerning the application by electronic mail (e-mail) during the pendency of the application. TEAS applications that qualify for the reduced fee option will be referred to as "TEAS Plus" applications. The reduced fee option will not apply to applications filed pursuant to section 66(a) of the Act, because they cannot be filed through TEAS.

**DATES:** *Effective Date:* July 18, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mary E. Hannon, Office of the Deputy Commissioner for Trademark Examination Policy, by telephone at (571) 272-9569, by e-mail to [mary.hannon@uspto.gov](mailto:mary.hannon@uspto.gov), or by facsimile to (571) 273-9569.

**SUPPLEMENTARY INFORMATION:** A proposed rule was published in the *Federal Register* (70 FR 17636) on April 7, 2005, and in the *Official Gazette* on May 3, 2005. Two organizations, three attorneys, one law firm, and two individuals submitted written comments.

The Office will offer a reduced fee to TEAS applicants who use the Office's Trademark/Service Mark Application, Principal Register form if: (1) The application meets the additional filing requirements specified in § 2.22(a); (2) the applicant files certain communications regarding the

application through TEAS; and (3) the applicant agrees to receive communications concerning the application by e-mail. The application will be referred to as a TEAS Plus application. The applicant must pay an additional fee set forth in § 2.6(a)(1)(iv) if, at any time during examination of the TEAS Plus application, the Office determines that: (1) The application did not meet the filing requirements of § 2.22(a) on the filing date; (2) the applicant filed one of the communications listed in § 2.23(a) on paper; or (3) the applicant refused to receive correspondence from the Office by e-mail.

References in this notice to "the Act," "the Trademark Act," or "the statute" refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, as amended.

**Background**

This final rule is in accordance with the Consolidated Appropriations Act, 2005, Sec. 2, Division B, Title VIII, Sec. 802 of Public Law 108-447, 118 Stat. 2809, 2929, enacted on December 8, 2004. The Appropriations Act amends the Trademark Act of 1946 to require that:

During fiscal years 2005 and 2006, under such conditions as may be prescribed by the Director, the fee under § 31(a) of the Trademark Act \* \* \* for: (1) The filing of a paper application for the registration of a trademark shall be \$375; (2) the filing of an electronic application shall be \$325; and (3) the filing of an electronic application meeting certain additional requirements prescribed by the Director shall be \$275 \* \* \*.

Effective January 31, 2005, application filing fees were amended in accordance with the provisions of 15 U.S.C. 1113(a), as amended by the Appropriations Act. A final rule was published at 70 FR 2952 (Jan. 19, 2005). The filing fee for paper applications filed under section 1 or 44 of the Trademark Act is now \$375.00 per class, and the filing fee for TEAS applications filed under section 1 or 44 of the Trademark Act is now \$325.00 per class.

**Requirements for a TEAS Plus Application**

This rule sets forth the requirements for TEAS applications that must be satisfied in order to be eligible for a reduced fee of \$275.00 per class. The rule only applies to TEAS applications filed on the Office's Trademark/Service Mark Application, Principal Register form. Under § 2.22, to obtain a reduced filing fee an application must include the following:

- (1) The applicant's name and address;
- (2) The applicant's legal entity;

(3) The citizenship of an individual applicant, or the state or country of incorporation or organization of a juristic applicant;

(4) If the applicant is a partnership, the names and citizenship of the applicant's general partners;

(5) A name and address for correspondence;

(6) An e-mail address for correspondence and an authorization for the Office to send correspondence concerning the application to the applicant or applicant's attorney by e-mail;

(7) One or more basis or bases for filing under section 1 and/or section 44 of the Act that satisfy all the requirements of § 2.34. If more than one basis is set forth, the applicant must comply with the requirements of § 2.34 for each asserted basis;

(8) Correctly classified goods and/or services, with an identification of goods and/or services from the Office's Acceptable Identification of Goods and Services Manual (Goods and Services Manual). In an application based on section 44 of the Act, the scope of goods and/or services covered by the section 44 basis may not exceed the scope of the goods and/or services in the foreign application or registration;

(9) If the application contains goods and/or services in more than one class, compliance with § 2.86;

(10) A filing fee for each class of goods and/or services as required by § 2.6(a)(iii);

(11) A verified statement that meets the requirements of § 2.33, dated and signed by a person properly authorized to sign on behalf of the applicant pursuant to § 2.33(a);

(12) A clear drawing of the mark. If the applicant does not claim standard characters, the applicant must attach a digitized image of the mark in .JPG format. If the mark includes color, the drawing must show the mark in color;

(13) If the mark is in standard characters, a mark comprised of only characters in the Office's standard character set available at <http://www.uspto.gov/teas/standardCharacterSet.html>, typed in the appropriate field of the TEAS Plus form;

(14) If the mark includes color, a statement naming the color(s) and describing where the color(s) appears on the mark, and a claim that the color(s) is a feature of the mark;

(15) If the mark is not in standard characters, a description of the mark;

(16) If the mark includes non-English wording, an English translation of that wording;

(17) If the mark includes non-Latin characters, a transliteration of those characters;

(18) If the mark includes an individual's name or portrait, either: (1) a statement that identifies the living individual whose name or likeness the mark comprises and written consent of the individual, or (2) a statement that the name or portrait does not identify a living individual (see section 2(c) of the Act);

(19) If the applicant owns one or more registrations for the same mark, a claim of ownership of the registration(s), identified by the U.S. registration number(s), pursuant to § 2.36; and

(20) If the application is a concurrent use application, compliance with § 2.42.

In addition to the TEAS Plus application filing requirements in § 2.22, a TEAS Plus applicant must comply with the requirements set forth in § 2.23. The applicant must: (1) Continue to receive communications from the Office by e-mail; and (2) file the following documents through TEAS: response(s) to Office action(s); request(s) to change the correspondence address; appointment or revocation of power of attorney; appointment or revocation of domestic representative; preliminary amendment(s); amendment(s) to allege use under section 1(c) of the Act; statement(s) of use under section 1(d) of the Act; request(s) for extensions of time to file a statement of use under section 1(d) of the Act; and request(s) to delete a section 1(b) basis.

#### Discussion of Specific Rules

The Office is adding § 2.22, and amending §§ 2.6, 2.23, 2.53, and 7.25.

The Office is revising § 2.6(a)(1) to add new subsections (iii) and (iv). Section 2.6(a)(1)(iii) adds a new fee in the amount of \$275.00 per class for filing a TEAS Plus application under § 2.22. Section 2.6(a)(1)(iv) adds a new fee in the amount of \$50.00 per class for processing a TEAS Plus application filed under § 2.22 that does not meet the requirements of §§ 2.22 and 2.23. The additional fee is the difference between the filing fee for a regular TEAS application and the reduced fee for a TEAS Plus application.

The Office is adding a new § 2.22. Section 2.22(a) sets forth the requirements for filing a TEAS Plus application. To file a TEAS Plus application, an applicant must use the electronic Trademark/Service Mark Application, Principal Register form, accessed from <http://teas.uspto.gov>, and choose the reduced fee option presented as the TEAS Plus form on the initial screen.

For most of the filing requirements in § 2.22(a), an applicant must enter the information in the appropriate data fields on the TEAS Plus form. To enter the identification of goods/services, an applicant will be instructed to enter search terms appropriate for the desired goods/services within the identified field on the TEAS Plus form. The system will then retrieve relevant entries from the Goods and Services Manual, and the applicant must select one or more of the entries to add to the TEAS Plus form. The Goods and Services Manual, available on the Office's web site at: <http://www.uspto.gov>, contains more than 20,000 listings of acceptable identifications of goods and services.

Section 2.22(b) provides that if a TEAS Plus application does not meet the filing requirements of paragraph (a), the applicant must pay the fee required by § 2.6(a)(1)(iv). The application will retain its original filing date if the initial application met the minimum application filing requirements of § 2.21. Section 2.22(b) applies where an application is initially designated as a TEAS Plus application, but upon examination, the Office determines that the application did not meet the TEAS Plus filing requirements as of the filing date.

Section 2.22(c) lists the types of TEAS applications that are not eligible for the reduced fee option under paragraph (a). Applications for certification marks, collective marks, collective membership marks and applications for registration on the Supplemental Register cannot be filed as TEAS Plus applications because the Office does not have TEAS Plus forms for these types of applications.

The Office is removing the provisions of the current § 2.23, which sets forth the Office practice of assigning serial numbers to applications and informing applicants of serial numbers and filing dates. The Office has no intention of changing this practice, but is merely deleting this administrative information from the rules of practice. Such administrative practices are generally set forth in the Office's Trademark Manual of Examining Procedure (TMEP).

The Office is adding new subsections §§ 2.23(a) and 2.23(b). Section 2.23(a) sets forth additional examination requirements for a TEAS Plus application. Section 2.23(a)(1) requires that applicant file the following communications through TEAS: (1) Responses to Office actions (except notices of appeal); (2) Requests to change the correspondence address or owner's address; (3) Appointment or revocation of power of attorney; (4)

Appointment or revocation of domestic representative; (5) Preliminary amendments; (6) Amendments to allege use under section 1(c) of the Act; (7) Statements of use under section 1(d) of the Act; (8) Request(s) for extensions of time to file a statement of use under section 1(d) of the Act; and (9) Requests to delete a section 1(b) basis.

Applicants are encouraged to file notices of appeal through the Electronic System for Trademark Trials and Appeals (ESTTA), available on-line at <http://www.uspto.gov>, but this is not mandatory.

Proposed §§ 2.23(a)(2) and 2.62(b) required that applicants file responses to Office actions within two months of the mailing date, but the Office has withdrawn this proposal.

Section 2.23(a)(2) requires that the applicant continue to receive communications from the Office by electronic mail.

Section 2.23(b) requires that the applicant pay the additional fee set forth in § 2.6(a)(1)(iv) if the applicant fails to meet any of the requirements in § 2.23(a) during the pendency of the application.

The Office is revising § 2.53(a) to break it into subsections (a)(1) and (a)(2). Section 2.53(a)(1) provides that in a TEAS Plus application, an applicant who seeks registration of a standard character mark must enter the mark in the appropriate field on the TEAS Plus form. Section 2.53(a)(2) provides that in all other TEAS submissions, an applicant seeking registration of a standard character mark must either (1) enter the mark in the appropriate field on the TEAS form, or (2) attach a digitized image of the mark that meets the requirements of § 2.53(c), and check the box to claim that the mark consists of standard characters. Thus, a TEAS Plus applicant will not have the option of attaching a digitized image of a standard character mark. The TEAS Plus applicant must enter a mark comprised of characters from the Office's standard character set, currently available at <http://www.uspto.gov/teas/standardCharacterSet.html>, and the Office will generate a digitized image of the mark in .JPG format and attach the image to the TEAS Plus form.

When issuing an Office action in a TEAS Plus application, the examining attorney will require that the applicant either respond through TEAS, or, if responding on paper, include the additional \$50.00 per class fee with the response.

The Office is amending § 7.25(a) to add §§ 2.22 and 2.23 to the list of rules in part 2 of this chapter that do not apply to requests for extension of

protection of international registrations to the United States. A request for extension of protection to the United States is not eligible for examination as a TEAS Plus application because it cannot be filed directly through TEAS.

### Responses to Comments

#### Identification of Goods/Services

*Comment:* Three comments note that the Office's Goods and Services Manual includes many "open-ended" listings that require an applicant to complete parenthetical information, such as "headgear, namely (specify type, e.g., hats, caps)," and ask whether a TEAS Plus filer will be able to complete the parenthetical information without being subject to the higher fee.

*Response:* The TEAS Plus form will permit an applicant to select any identification in the Manual, including those that require the applicant to complete parenthetical information. When the applicant selects an "open-ended" identification, that identification will permit the applicant to type the necessary information, as per the instructions within the listing (e.g., "specify the function of the programs"). If an applicant attempts to use such a listing without completing the required information, TEAS Plus will generate an error message.

*Comment:* One comment asks whether an applicant will lose TEAS Plus status if the applicant completes the parenthetical information in an open-ended identification, but is later required to amend the parenthetical information because it is deemed indefinite.

*Response:* The applicant will not lose TEAS Plus status in this situation, unless the applicant uses the free-text field to insert an additional list of items into the identification, or fills it with inappropriate information.

*Comment:* One comment asks whether an applicant will lose TEAS Plus status if the applicant is required to add a class to its application, or to amend the goods or services in a single class of a multi-class application, and, if so, whether the additional fee will apply only to the newly added or amended class.

*Response:* Section 2.22(a)(8) requires that the goods/services be correctly classified. An applicant will lose TEAS Plus status if amendment of the classification is required because the applicant classified the goods/services in the wrong class, and will be required to pay the additional fee for all classes in the application. However, it is extremely unlikely that an application will lose its TEAS Plus status because

the goods/services are incorrectly classified, because the TEAS Plus form is designed to automatically provide the correct class for goods/services selected from the Goods and Services Manual, and it will not permit an applicant to edit the classification field on the form.

The application will not lose its TEAS Plus status if the examining attorney determines during examination that the original identification of goods/services is inaccurate and requires amendment of the identification or classification.

*Comment:* Three comments note that there are many goods and services that are new and not yet listed in the Goods and Services Manual. Two comments suggest that § 2.22(a)(8) be amended to include an exception for goods and services that are not yet included in the Manual, but are otherwise acceptable. Two comments urge the Office to act promptly on suggestions for supplementing the Manual, to enable more applicants to take advantage of TEAS Plus.

*Response:* The suggestion to include an exception for goods and services that are not yet included in the Manual has not been adopted. It is not feasible to provide such exceptions to the TEAS Plus rule, because processing the exceptions would be time-consuming and costly, and would thus defeat the purpose of TEAS Plus.

The Office continually updates its Goods and Services Manual, and actively seeks suggestions from interested members of the public. See Request for Suggestions from the Public for Additions to the Trademark Acceptable Identification of Goods and Services Manual, 1269 TMOG 29 (April 1, 2003). Suggestions can be sent to [tmidsuggest@uspto.gov](mailto:tmidsuggest@uspto.gov). The Office will act upon these suggestions promptly, so as to enable as many applicants as possible to take advantage of TEAS Plus.

#### Drawings

*Comment:* Two comments note that the Office's standard character set at <http://www.uspto.gov/teas/standardCharacterSet.html> currently includes both supported and unsupported standard characters, and that an applicant whose mark includes unsupported characters must attach a .JPG image of its mark, which is not permitted in a TEAS Plus application. The comments urge the Office to permit applicants to file TEAS Plus applications for marks that include the characters that are currently unsupported.

*Response:* The characters that are unsupported in a regular TEAS application will be supported in TEAS Plus. The TEAS Plus form is designed

to support all characters in the Office's standard character set.

*Comment:* One comment notes that proposed § 2.22(a)(12) required a drawing that meets the requirements of 37 CFR 2.51 and 2.52, and urges the Office to change these rules to permit applicants to file drawings that contain gray tones to show shading.

*Response:* The language in proposed § 2.22(a)(12) has been changed. The final rule requires "a clear drawing of the mark" in a TEAS Plus application, the same standard used in § 2.21(a)(3), which sets forth the requirements for receipt of an application filing date. Thus, an applicant whose drawing meets the requirements of § 2.21(a)(3) will be entitled to use TEAS Plus even if the drawing does not meet all the requirements of §§ 2.51 and 2.52.

It is noted that the Office now accepts drawings that contain the color gray, or stippling that produces gray tones. See TMEP § 807.07(e); Exam Guide 1-05, issued May 20, 2005, posted at <http://www.uspto.gov/web/offices/tac/notices/examguide1-05.htm>.

#### Requirement for Signed Application

*Comment:* One comment urges the Office to withdraw the requirement for a signature on a TEAS Plus application. The comment asserts that attorneys encounter difficulties in obtaining signatures from their clients, and that if these attorneys deferred filing until they secured the required signature, their clients could miss a deadline for claiming priority. The comment notes that applications are currently not examined until 5-6 months after filing, and suggests that the Office permit applicants to provide a signature within a short time period after filing, such as 2-3 months.

*Response:* The suggestion has not been adopted. TEAS Plus will lower the cost of examination and reduce pendency in large part because most applications will be complete when filed, and will therefore, result in the issuance of fewer Office actions. Allowing applicants to submit signatures "within a short time after filing" could often result in the need for an Office action, which would be costly and burdensome and defeat the purpose of TEAS Plus.

#### Type of Mark or Type of Application

*Comment:* One comment notes that regular TEAS forms are available for applications on the Supplemental Register, and for collective and certification mark applications, and questions the rationale for excluding these types of applications from TEAS Plus.

*Response:* At this time, the Office does not have TEAS Plus forms for applications for registration on the Supplemental Register, or for collective and certification marks.

An applicant will lose its TEAS Plus status if the mark later has to be amended to a collective or certification mark. However, the applicant will not lose TEAS Plus status if the application is amended from the Principal to the Supplemental Register, as long as the amendment is filed through TEAS.

#### *TEAS Validation*

*Comment:* Two comments suggest that the Office take steps to ensure that the TEAS Plus form will flag missing items during validation.

*Response:* TEAS Plus will flag missing items and will not accept the transmission if the applicant omits one of the elements that is required for all TEAS Plus applications. However, TEAS Plus will accept the transmission of an application that omits an item that is required for some applications but not others, e.g., a translation of non-English wording. Omission of such an item could trigger a requirement for the additional fee. Moreover, the additional fee may be required if an applicant enters inappropriate information in a required field. For example, if an applicant enters “???” as its state of incorporation, TEAS Plus will accept the transmission, but applicant will be required to pay the \$50 fee to convert the application to a regular TEAS application. Accordingly, applicants should review their TEAS Plus applications carefully before transmitting them.

#### *Filing Responses to Office Actions Through TEAS*

*Comment:* Two comments assert that scanning multiple page documents into .JPG format is cumbersome and time-consuming, since each page of a document must be scanned separately, and urge the Office to begin accepting alternative formats.

*Response:* At this time, each page must be scanned separately, and only 50 pages can be attached to a single .JPG submission. The Office is working to resolve this problem, and expects to be able to accept files in .PDF format in the future. At this time, however, an applicant whose attachment is not in .JPG format cannot use TEAS Plus.

*Comment:* Two comments assert that TEAS does not accommodate all types of communications which a filer might need to make when responding to an Office action, and request that an exception be made for situations in which TEAS fails to provide an

electronic method to make a particular filing. The examples given were the inability to file a response on the same day that the action is sent; the inability to send a certified copy of a foreign registration, and the inability to send evidence of radio and television commercials.

*Response:* TEAS can accommodate most responses to Office actions. Certified copies of foreign registrations are not required during examination. A photocopy, which can easily be scanned into a .JPG file, is sufficient. 15 U.S.C. 1126(e); 37 CFR 2.34(a)(3)(ii).

At this time, TEAS does not have the technical capability to accept a response to an Office action before the Trademark Applications and Registrations Retrieval (TARR) system is updated, which could take up to 72 hours after the action is issued. However, waiting for up to 72 hours is not overly burdensome to applicants. It has been the experience of the Office that very few responses to Office actions are filed within 72 hours after an Office action is issued.

It is true that attachments comprising audio or video tapes cannot be sent directly through TEAS. However, for sound marks there is a process in place to handle these filings electronically. The sound mark can be sent in an e-mail attachment as a .WAV file or MP3 file directly to the TEAS Support Team, at [teas@uspto.gov](mailto:teas@uspto.gov). TMEP §§ 807.09 and 1202.15. Because the TEAS form will require a .JPG attachment for the specimen, the applicant must still create a .JPG file for this purpose; however, it will merely consist of a statement that “A .WAV file (or MP3 file) has been sent directly to the TEAS Support Team for processing.” TEAS Plus will allow for this same work-around solution. It is not possible to adapt TEAS Plus to accept every conceivable type of filing. TEAS Plus offers a reduced fee for filings that meet the TEAS Plus requirements, because these filings require less work by Office personnel, and the Office is passing these cost savings on to applicants. Filings that do not or cannot meet these requirements are subject to the higher fee because of the additional work that is required. Exception processing, apart from the work-around solution already in place for sound marks, is costly and time-consuming, and would defeat the purpose of TEAS Plus.

#### *Two-Month Response Deadline*

*Comment:* Four comments oppose the two-month response deadline for TEAS Plus applications. It is asserted that docketing two different deadlines would be burdensome for applicants and their attorneys; that the requirement would

discriminate against foreign applicants, small businesses and individual applicants, and benefit wealthier, more technologically advanced applicants; that there is insufficient justification for imposing a two-month response deadline absent a corresponding benefit to applicants or the Office; that the two-month deadline does not appear to have any bearing on the cost of examination or on the ease or ability of the Office to correspond with applicants; that attorneys may be unable to meet the deadline due to difficulties in communicating with clients, particularly foreign clients, small entities and clients located in less-developed nations; that there is no need to reduce the response time in order to accomplish the purposes of TEAS Plus; that Congress established a six-month response period and applicants should not have to give up their right to the statutory response period in order to use TEAS Plus; that while average pendency may be reduced, TEAS Plus applications could not be abandoned until after expiration of the statutory six-month deadline; and that the two-month deadline is problematic because the TEAS system does not recognize the situation that a deadline expires on a weekend or holiday and responses filed the next day are considered timely, which poses a potential trap for applicants who respond near the end of the two-month deadline.

*Response:* The Office has withdrawn the proposed requirement for a two-month response deadline.

It is noted that, while there was a time when TEAS did not accept transmission of a response filed on the next business day after a deadline expiring on a weekend or holiday, this problem has been resolved. TEAS now accepts such responses.

#### *Assigning Serial Numbers*

*Comment:* One comment opposes the removal of the current § 2.23, which sets forth the Office’s administrative practice of assigning serial numbers to applications and informing the applicant of the serial number and filing date. The comment notes that prompt receipt of a filing date and serial number is extremely important to trademark owners, and asserts that any change in procedure should be subject to public notice and comment.

*Response:* The Office has no plans to change its procedures for assigning filing dates and serial numbers, or for notifying applicants of serial numbers and filing dates. However, it is unnecessary to set forth these internal administrative procedures in the Code of Federal Regulations. The

requirements for receipt of a filing date are set forth in § 2.21, and any change in these requirements is subject to notice and comment.

#### *E-Mail Communications*

*Comment:* One comment asks how the requirement that an applicant must receive communications from the Office by electronic mail in § 2.23(a)(2) differs from the requirement in § 2.22(a)(6) that the applicant provide an e-mail address and authorize the Office to send correspondence concerning the application by e-mail. The comment also questioned whether a filer will lose TEAS Plus status if the Office's e-mail communication capability is interrupted because of a technical problem, or because the applicant's e-mail address provided at the time of filing has changed or been replaced.

*Response:* Sections 2.22 and 2.23 differ in that § 2.22 sets forth the requirements that must be met at the time of filing, while § 2.23 sets forth the requirements that must be met during the pendency of the application to maintain TEAS Plus status. Section 2.22(a)(6) requires that the application as filed include an e-mail address for correspondence and an authorization for the Office to send correspondence concerning the application to the applicant by e-mail. Section 2.23(a)(2) requires that the applicant continue to receive correspondence by e-mail throughout the pendency of the application.

If an applicant files a request to have correspondence sent on paper, the applicant will lose TEAS Plus status. However, an applicant will not lose TEAS Plus status if the e-mail transmission does not go through due to a technical problem at the USPTO.

Applicants have a duty to notify the Office of any change of the correspondence address. 37 CFR 2.18; TMEP § 603.03. Therefore, an applicant will lose TEAS Plus status if an e-mail communication does not go through because the applicant failed to notify the Office of a change in the e-mail correspondence address.

*Comment:* One comment expresses support for the requirement that applicants authorize correspondence by e-mail, but asserts that the Office does not consistently process electronically filed requests to change e-mail addresses, and requests that this issue be addressed.

*Response:* This problem has been corrected. Requests to change an e-mail correspondence address filed through TEAS are now automatically entered into the Office's automated systems.

#### *Collection of Additional Fee*

*Comment:* One comment asks how the fee required by § 2.6(a)(1)(iv) will be collected from applicants who fail to meet the requirements of §§ 2.22 and 2.23.

*Response:* The examining attorney will issue a standard Office action requiring payment of the additional fee.

When issuing a non-final action on a TEAS Plus application, the examining attorney will require that the applicant: (1) Respond through TEAS; or (2) submit the additional fee if filing a paper response. If the applicant files a paper response without the additional fee, the requirement for payment of the additional fee will be made final, assuming that the application is otherwise in condition for final refusal.

#### *General Inquiry*

*Comment:* One comment expresses support for a reduced fee, and asks what the requirements will be, and when the rules will go into effect.

*Response:* The effective date is set forth above, under the heading "Effective Date," and the requirements are set forth below in §§ 2.6, 2.22, 2.23, and 2.53.

#### *Rule Making Requirements*

##### *Executive Order 13132*

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

##### *Regulatory Flexibility Act*

The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that the rule changes will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)).

The current filing fees for trademark applications are \$375.00 per class for applications filed on paper and \$325.00 per class for trademark applications filed electronically through the Trademark Electronic Application System (TEAS). The sole purpose of the final rule is to provide applicants that electronically file trademark applications through TEAS with the added option of filing the application for a reduced fee of \$275.00 per class. Applications filed under the reduced fee

option will be referred to as TEAS Plus applications.

In fiscal year 2004, the agency received approximately 245,000 trademark applications. Of that total, the Office estimates that 179,000 trademark applications were filed through TEAS and that 66,000 of the TEAS filers were small entities. The Office projects that it will receive approximately 264,000 trademark applications in fiscal year 2005, that an estimated 211,000 will be filed through TEAS, and that approximately 42,000 TEAS filers will take advantage of the reduced fee option. The Office estimates that of the projected 42,000 TEAS Plus applications filed during fiscal year 2005, approximately 15,500 will be filed by small entities.

Because the final rule merely provides all trademark applicants, including small businesses, with an alternative filing method at a reduced cost, the agency certifies that any economic impact on small entities affected by the rule will not be significant. The agency did not receive any comments in response to the certification in the Regulatory Flexibility Act section of the Notice of Proposed Rule Making published in the **Federal Register** (70 FR 17636) on April 7, 2005.

##### *Paperwork Reduction Act*

The rules are in conformity with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

Notwithstanding any other provision of law, no person is required 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 PRA unless that collection of information displays a currently valid OMB control number.

This rule involves collections of information requirements subject to the PRA. The collections of information involved in this rule have been reviewed and previously approved by OMB under the following control numbers: 0651-0009 and 0651-0050. This rule includes provisions that affect the fee structures for approved information collection activities under 0651-0009 Trademark Processing. Changes to the fee structures, as set forth in this rule, will be submitted to the Office of Management and Budget for review and approval at the time of renewal of 0651-0009.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency, (2) the accuracy of the agency's estimate of the burden, (3) ways to enhance the quality, utility,

and clarity of the information to be collected, and (4) ways to minimize the burden of the collection of information to respondents.

Send comments regarding any other aspect of this data collection, including suggestions for reducing the burden, to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 (Attn: Ari Leifman), and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20230 (Attn: PTO Desk Officer).

### List of Subjects

#### 37 CFR Part 2

Administrative practice and procedure, Trademarks.

#### 37 CFR Part 7

Administrative practice and procedure, Trademarks.

■ 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 Office is amending parts 2 and 7 of title 37 as follows:

### PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. 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.

■ 2. Amend § 2.6 to revise paragraph (a)(1) to read as follows:

#### § 2.6 Trademark fees.

\* \* \* \* \*

(a) \* \* \*

(1) Application filing fees.

(i) For filing an application on paper, per class—\$375.00

(ii) For filing an application through TEAS, per class—\$325.00

(iii) For filing a TEAS Plus application under § 2.22, per class—\$275.00

(iv) Additional processing fee under §§ 2.22(b) and 2.23(b), per class—\$50.00

\* \* \* \* \*

■ 3. Add § 2.22, to read as follows:

#### § 2.22 Filing requirements for a TEAS Plus application.

(a) A trademark/service mark application for registration on the Principal Register under section 1 and/or section 44 of the Act will be entitled to a reduced filing fee under § 2.6(a)(1)(iii) if it is filed through TEAS and includes:

- (1) The applicant's name and address;
- (2) The applicant's legal entity;
- (3) The citizenship of an individual applicant, or the state or country of

incorporation or organization of a juristic applicant;

(4) If the applicant is a partnership, the names and citizenship of the applicant's general partners;

(5) A name and address for correspondence;

(6) An e-mail address for correspondence, and an authorization for the Office to send correspondence concerning the application to the applicant or applicant's attorney by e-mail;

(7) One or more bases for filing that satisfy all the requirements of § 2.34. If more than one basis is set forth, the applicant must comply with the requirements of § 2.34 for each asserted basis;

(8) Correctly classified goods and/or services, with an identification of goods and/or services from the Office's Acceptable Identification of Goods and Services Manual, available through the TEAS Plus form and at <http://www.uspto.gov>. In an application based on section 44 of the Act, the scope of the goods and/or services covered by the section 44 basis may not exceed the scope of the goods and/or services in the foreign application or registration;

(9) If the application contains goods and/or services in more than one class, compliance with § 2.86;

(10) A filing fee for each class of goods and/or services, as required by § 2.6(a)(1)(iii);

(11) A verified statement that meets the requirements of § 2.33, dated and signed by a person properly authorized to sign on behalf of the applicant pursuant to § 2.33(a);

(12) A clear drawing of the mark. If the applicant does not claim standard characters, the applicant must attach a digitized image of the mark in .jpg format. If the mark includes color, the drawing must show the mark in color;

(13) If the mark is in standard characters, a mark comprised of only characters in the Office's standard character set, currently available at <http://www.uspto.gov>, typed in the appropriate field of the TEAS Plus form;

(14) If the mark includes color, a statement naming the color(s) and describing where the color(s) appears on the mark, and a claim that the color(s) is a feature of the mark;

(15) If the mark is not in standard characters, a description of the mark;

(16) If the mark includes non-English wording, an English translation of that wording;

(17) If the mark includes non-Latin characters, a transliteration of those characters;

(18) If the mark includes an individual's name or portrait, either (i)

a statement that identifies the living individual whose name or likeness the mark comprises and written consent of the individual, or (ii) a statement that the name or portrait does not identify a living individual (*see* section 2(c) of the Act);

(19) If the applicant owns one or more registrations for the same mark, a claim of ownership of the registration(s) identified by the registration number(s), pursuant to § 2.36; and

(20) If the application is a concurrent use application, compliance with § 2.42.

(b) If an application does not meet the requirements of paragraph (a) of this section at the time of filing, the applicant must pay the fee required by § 2.6(a)(1)(iv). The application will retain its original filing date, provided that when filed, the application met the filing date requirements of § 2.21.

(c) The following types of applications cannot be filed as TEAS Plus applications under paragraph (a) of this section:

(1) Applications for certification

marks (*see* § 2.45);

(2) Applications for collective marks (*see* § 2.44);

(3) Applications for collective membership marks (*see* § 2.44); and

(4) Applications for registration on the Supplemental Register (*see* § 2.47).

■ 4. Revise § 2.23 and its heading to read as follows:

#### § 2.23 Additional requirements for TEAS Plus application.

(a) In addition to the filing requirements under § 2.22(a), the applicant must:

(1) File the following communications through TEAS:

(i) Responses to Office actions (except notices of appeal under section 20 of the Trademark Act);

(ii) Requests to change the correspondence address and owner's address;

(iii) Appointment and/or revocation of power of attorney;

(iv) Appointment and/or revocation of domestic representative;

(v) Preliminary amendments;

(vi) Amendments to allege use under section 1(c) of the Act or statements of use under section 1(d) of the Act;

(vii) Request(s) for extensions of time to file a statement of use under section 1(d) of the Act; and

(viii) Request(s) to delete a section 1(b) basis.

(2) Continue to receive communications from the Office by electronic mail.

(b) If an application does not meet the requirements of paragraph (a) of this section, the applicant must pay the fee required by § 2.6(a)(1)(iv).

■ 5. Amend § 2.53 to revise paragraph (a) to read as follows:

§ 2.53 Requirements for drawings filed through the TEAS.

\* \* \* \* \*

(a)(1) Standard character drawings in TEAS Plus applications filed under § 2.22: If an applicant is filing a standard character drawing, the applicant must enter the mark in the appropriate field on the TEAS Plus form.

(2) Standard character drawings in all other TEAS submissions: If an applicant is filing a standard character drawing, the applicant must either:

(i) Enter the mark in the appropriate field on the TEAS form; or

(ii) Attach a digitized image of the mark to the TEAS submission that meets the requirements of paragraph (c) of this section, and check the box to claim that the mark consists of standard characters.

\* \* \* \* \*

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARK

■ 6. The authority citation for 37 CFR Part 7 continues to read as follows:

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

■ 7. Amend § 7.25 to revise paragraph (a) to read as follows:

§ 7.25 Sections of part 2 applicable to extension of protection.

(a) Except for §§ 2.22–2.23, 2.130–2.131, 2.160–2.166, 2.168, 2.173, 2.175, 2.181–2.186 and 2.197, all sections in part 2 and all sections in part 10 of this chapter shall apply to an extension of protection of an international registration to the United States, including sections related to proceedings before the Trademark Trial and Appeal Board, unless otherwise stated.

\* \* \* \* \*

Dated: June 29, 2005.

Jon W. Dudas,

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

[FR Doc. 05–13301 Filed 7–5–05; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME–OAR–2005–MD–0006; FRL–7933–6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Approval of Clarifications of Requirements for Fuel-Burning Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions are clarifications to the applicability and compliance methods for particulate matter standards for fuel-burning equipment. The EPA is approving these revisions to Maryland regulations in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on September 6, 2005, without further notice, unless EPA receives adverse written comment by August 5, 2005. If EPA receives such comments, it 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: Submit your comments, identified by Regional Material in EDocket (RME) ID Number RME–OAR–2005–MD–0006 by one of the following methods:

A. Federal eRulemaking Portal: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

B. Agency Web site: http://www.docket.epa.gov/rmepub/ RME, EPA’s electronic public docket and comment system, is EPA’s preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: campbell.dave@epa.gov.

D. Mail: RME–OAR–2005–MD–0006, David Campbell, Chief, Air Quality Planning, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. RME–OAR–2005–MD–0006. EPA’s policy is that all comments received will be included in the public

docket without change, and may be made available online at http://www.docket.epa.gov/rmepub/, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at http://www.docket.epa.gov/rmepub/. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, or by e-mail at miller.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 12, 2004, the State of Maryland submitted a formal revision to