

Dated: August 4, 2003.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 2003-T-024]

RIN 0651-AB68

Reorganization of Correspondence and Other General Provisions

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 separate the provisions for patent matters and trademark matters with respect to filing correspondence, requesting copies of documents, payment of fees, and general information. Specifically, the Office is amending its Rules of Practice in Patent Cases to delete all references to trademark matters, and amending its Rules of Practice in Trademark Cases to add new rules setting forth provisions for corresponding with and paying fees to the Office in trademark cases, and for requesting copies of trademark documents.

EFFECTIVE DATE: September 12, 2003.

FOR FURTHER INFORMATION CONTACT:

Mary Hannon, Office of the Commissioner for Trademarks, by telephone at (703) 308-8910, ext. 137; by e-mail to mary.hannon@uspto.gov; by facsimile transmission addressed to her at (703) 872-9280; or by mail marked to her attention and addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514.

SUPPLEMENTARY INFORMATION: The Office is amending its rules to separate the provisions for patent and trademark matters with respect to correspondence, requesting copies of documents, payment of fees, and general information. Specifically, the Office is (1) amending 37 CFR Part 1 to delete all references to trademarks, and (2) amending 37 CFR Part 2 to add new rules setting forth provisions for corresponding with and paying fees to the Office in trademark cases, and for requesting copies of trademark documents.

Discussion of Specific Rules

The Office is amending rules 1.1, 1.4, 1.5, 1.6, 1.8, 1.10, 1.12, 1.13, 1.22, 1.26, 2.1, 2.2, 2.6, and 2.123; and adding new rules 2.190, 2.191, 2.192, 2.193, 2.194, 2.195, 2.196, 2.197, 2.198, 2.200, 2.201, 2.206, 2.207, 2.208, and 2.209.

The Office is removing § 1.1(a)(2), amending § 1.1(a) to delete reference to § 1.1(a)(2), amending § 1.1(a)(4) to delete reference to trademark-related documents, and revising the note following § 1.1(f) to delete the reference to "trademark cases."

The Office is removing and reserving § 1.4(d)(1)(iii), amending § 1.4(d)(1)(ii) to change a semicolon to a period, and amending §§ 1.4(a)(1), (a)(2), (b) and (d)(1) to delete references to trademark applications, trademark registrations, and trademark filings.

The Office is removing and reserving § 1.5(c).

The Office is removing and reserving §§ 1.6(a)(4), (d)(7) and (d)(8), and revising §§ 1.6(d), (d)(3), and (d)(4) to delete all references to trademark matters.

The Office is removing and reserving § 1.8(a)(2)(ii).

The Office is amending § 1.10(a) to delete all references to trademark correspondence.

The Office is amending § 1.12(a) to delete all references to trademark assignments.

The Office is amending § 1.13 to delete all references to copies of trademark documents.

The Office is amending § 1.22 to delete all references to trademark fees and trademark registration files.

The Office is amending § 1.26(a) to delete the reference to trademark filing.

The Office is removing and reserving § 2.1, which provides that §§ 1.1 to 1.26 of this chapter apply to trademark cases.

The Office is amending § 2.2 to add definitions of "Director," "Office," "TEAS," and "Federal holiday within the District of Columbia."

The Office is adding a new § 2.6(b)(12), requiring a fee for processing any payment refused or charged back by a financial institution. This is consistent with current § 1.21(m).

The Office is adding a new § 2.6(b)(13), setting forth the fee for establishing a deposit account, and a service charge for each month when the balance at the end of the month is below \$1,000. This is consistent with current §§ 1.21(b)(1) and (2).

The Office is amending § 2.123(f)(2) to change a cross-reference.

The Office is adding a new § 2.190, setting forth the addresses for trademark

correspondence. This is consistent with current §§ 1.1(a)(2) and 1.1(a)(4).

The Office is adding a new § 2.191, providing that business with the Office must be transacted in writing, and that no attention will be paid to any alleged oral promise, stipulation, or understanding. This is consistent with current § 1.2.

The Office is adding a new § 2.192, providing that business must be conducted with decorum and courtesy. This is consistent with current § 1.3.

The Office is adding a new § 2.193, setting forth the requirements for correspondence and signatures in trademark cases. This is consistent with current § 1.4.

The Office is adding a new § 2.194, setting forth the requirements for identifying correspondence relating to trademark applications and registrations. This is consistent with current § 1.5.

The Office is adding a new § 2.195, setting forth the procedures for according filing dates in trademark cases. This is consistent with current § 1.6.

The Office is adding a new § 2.196, providing that when the last day for taking an action or paying a fee falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the action may be taken or fee may be paid on the next succeeding day that is not a Saturday, Sunday, or Federal holiday within the District of Columbia. This is consistent with current § 1.7.

The Office is adding a new § 2.197, setting forth the requirements and procedures for filing a document under a certificate of mailing or certificate of transmission. This is consistent with current § 1.8.

Section 2.197(b) requires that if correspondence is timely mailed or transmitted, but not received in the Office, the party who filed the correspondence must inform the Office of the timely mailing or transmission within two months after becoming aware that the Office has no evidence of receipt of the correspondence. This does not change current practice. While current § 1.8(b)(1) requires that the party inform the Office of the timely mailing or transmission "promptly," § 2.146(d) requires that a petition for revival or reinstatement in a trademark case be filed within two months of the date that the party who filed the correspondence became aware that there was a problem with the filing date of the correspondence, unless a different deadline is specified elsewhere in the rules. Trademark Manual of Examining Procedure §§ 305.02(f), 306.05(d) and 1705.04.

The Office is adding a new § 2.198, setting forth the procedures and requirements for filing correspondence by Express Mail. This is consistent with current § 1.10. Section 2.198(a)(1) provides that the Express Mail procedure cannot be used to file: Trademark applications filed under section 1 or section 44 of the Trademark Act; amendments to allege use under section 1(c) of the Trademark Act; statements of use under section 1(d) of the Trademark Act; requests for extension of time to file a statement of use under section 1(d) of the Trademark Act; affidavits of continued use under section 8 of the Trademark Act; renewal applications under section 9 of the Trademark Act, 15 U.S.C. § 1059; requests to change or correct addresses; combined filings under sections 8 and 9 of the Trademark Act; or combined affidavits or declarations under sections 8 and 15 of the Trademark Act.

Sections 2.198(c)(1), (d)(1) and (e)(1) require that if correspondence is sent by Express Mail under §§ 2.198(a) and (b) but not accorded a filing date as of the date of deposit with the United States Postal Service (USPS), the party who filed the correspondence may petition for a filing date as of the date of deposit with the USPS, within two months after becoming aware that the Office did not receive the correspondence, or that the Office accorded an incorrect filing date to the correspondence. This does not change current practice. While current § 1.10(c)(1), (d)(1) and (e)(1) require that the party inform the Office of the timely mailing or transmission "promptly," § 2.146(d) requires that a petition for revival or reinstatement in a trademark case be filed within two months of the date that the party who filed the correspondence became aware that there was a problem with the filing date of the correspondence, unless a different deadline is specified elsewhere in the rules. Trademark Manual of Examining Procedure §§ 305.03 and 1705.04.

The Office is adding a new § 2.200, setting forth the procedures for requesting copies of trademark assignments. This is consistent with current § 1.12.

The Office is adding a new § 2.201, setting forth the procedures for requesting copies of trademark registrations. This is consistent with current § 1.13.

The Office is adding a new § 2.206, providing that trademark fees must be paid in advance and must be itemized. This is consistent with current § 1.22.

The Office is adding a new § 2.207, setting forth the methods for paying fees in trademark cases. This is consistent with current § 1.23.

The Office is adding a new § 2.208, providing for the payment of trademark fees from deposit accounts. This is consistent with current § 1.25.

The Office is adding a new § 2.209, setting forth the procedures for refunding trademark fees. This is consistent with current § 1.26.

Rule Making Requirements

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), an initial regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. See 5 U.S.C. 603.

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 contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 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.

Administrative Procedure Act: This final rule merely renumbers rules of agency practice and procedure. There are no substantive changes to the rules. Therefore, this final rule may be adopted without prior notice and opportunity for public comment under 5 U.S.C. 553(b) and (c).

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Patents.

37 CFR Part 2

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 1 and 2 of title 37 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for part 1 continues to read as follows:

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

■ 2. Amend § 1.1 by revising the section heading, removing and reserving paragraph (a)(2), and revising paragraphs (a) introductory text and (a)(4) and removing the note following paragraph (f) to read as follows:

§ 1.1 Addresses for non-trademark correspondence with the United States Patent and Trademark Office.

(a) *In general.* Except as provided in paragraphs (a)(3)(i), (a)(3)(ii) and (d)(1) of this section, all correspondence intended for the United States Patent and Trademark Office must be addressed to either "Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450" or to specific areas within the Office as set out in paragraphs (a)(1) and (a)(3)(iii) of this section. When appropriate, correspondence should also be marked for the attention of a particular office or individual.

* * * * *

(4) *Office of Public Records correspondence.* (i) *Assignments.* All patent-related documents to be recorded by the Assignment Services Division, except for documents filed together with a new application or under § 3.81 of this chapter, should be addressed to: Mail Stop Assignment Recordation Services, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450. See § 3.27.

(ii) *Documents.* All requests for certified or uncertified copies of patent documents should be addressed to: Mail Stop Document Services, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450.

* * * * *

■ 3. Amend § 1.4 by removing and reserving paragraph (d)(1)(iii), and by revising paragraphs (a)(1), (a)(2), (b), (d)(1) introductory text, and (d)(1)(ii) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

(a) * * *

(1) Correspondence relating to services and facilities of the Office, such as general inquiries, requests for publications supplied by the Office, orders for printed copies of patents, orders for copies of records, transmission of assignments for recording, and the like, and

(2) Correspondence in and relating to a particular application or other proceeding in the Office. See particularly the rules relating to the

filing, processing, or other proceedings of national applications in subpart B, §§ 1.31 to 1.378; of international applications in subpart C, §§ 1.401 to 1.499; of ex parte reexaminations of patents in subpart D, §§ 1.501 to 1.570; of interferences in subpart E, §§ 1.601 to 1.690; of extension of patent term in subpart F, §§ 1.710 to 1.785; and of inter partes reexaminations of patents in subpart H, §§ 1.902 to 1.997.

(b) Since each file must be complete in itself, a separate copy of every paper to be filed in a patent application, patent file, or other proceeding must be furnished for each file to which the paper pertains, even though the contents of the papers filed in two or more files may be identical. The filing of duplicate copies of correspondence in the file of an application, patent, or other proceeding should be avoided, except in situations in which the Office requires the filing of duplicate copies. The Office may dispose of duplicate copies of correspondence in the file of an application, patent, or other proceeding.

(d)(1) Each piece of correspondence, except as provided in paragraphs (e) and (f) of this section, filed in an application, patent file, or other proceeding in the Office which requires a person's signature, must:

(ii) Be a direct or indirect copy, such as a photocopy or facsimile transmission (§ 1.6(d)), of an original. In the event that a copy of the original is filed, the original should be retained as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original.

■ 4. Amend § 1.5 by removing and reserving paragraph (c) and revising the section heading to read as follows.

§ 1.5 Identification of patent, patent application, or patent-related proceeding.

* * * * *

■ 5. Amend § 1.6 by removing and reserving paragraphs (a)(4), (d)(7) and (d)(8), and revising paragraphs (d) introductory text, (d)(3), and (d)(4) to read as follows:

§ 1.6 Receipt of correspondence.

* * * * *

(d) *Facsimile transmission.* Except in the cases enumerated below, correspondence, including authorizations to charge a deposit account, may be transmitted by facsimile. The receipt date accorded to the correspondence will be the date on which the complete transmission is

received in the United States Patent and Trademark Office, unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. See § 1.6(a)(3). To facilitate proper processing, each transmission session should be limited to correspondence to be filed in a single application or other proceeding before the United States Patent and Trademark Office. The application number of a patent application, the control number of a reexamination proceeding, the interference number of an interference proceeding, or the patent number of a patent should be entered as a part of the sender's identification on a facsimile cover sheet. Facsimile transmissions are not permitted and if submitted, will not be accorded a date of receipt, in the following situations:

* * * * *

(3) Correspondence which cannot receive the benefit of the certificate of mailing or transmission as specified in § 1.8(a)(2)(i)(A) through (D) and (F), and § 1.8(a)(2)(iii)(A), except that a continued prosecution application under § 1.53(d) may be transmitted to the Office by facsimile;

(4) Drawings submitted under §§ 1.81, 1.83 through 1.85, 1.152, 1.165, 1.174, or 1.437;

* * * * *

§ 1.8 [Amended]

■ 6. Amend § 1.8 by removing and reserving paragraph (a)(2)(ii).

■ 7. Amend § 1.10 by revising paragraph (a)(1) to read as follows:

§ 1.10 Filing of correspondence by "Express Mail."

(a)(1) Any correspondence received by the U.S. Patent and Trademark Office (USPTO) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed with the USPTO on the date of deposit with the USPS.

* * * * *

■ 8. Amend § 1.12 by revising paragraph (a) to read as follows:

§ 1.12 Assignment records open to public inspection.

(a)(1) Separate assignment records are maintained in the United States Patent and Trademark Office for patents and trademarks. The assignment records, relating to original or reissue patents, including digests and indexes (for assignments recorded on or after May 1, 1957), and published patent applications, are open to public inspection at the United States Patent and Trademark Office, and copies of

patent assignment records may be obtained upon request and payment of the fee set forth in § 1.19 of this chapter. See § 2.200 of this chapter regarding trademark assignment records.

(2) All records of assignments of patents recorded before May 1, 1957, are maintained by the National Archives and Records Administration (NARA). The records are open to public inspection. Certified and uncertified copies of those assignment records are provided by NARA upon request and payment of the fees required by NARA.

* * * * *

■ 9. Revise § 1.13 to read as follows:

§ 1.13 Copies and certified copies.

(a) Non-certified copies of patents, and patent application publications and of any records, books, papers, or drawings within the jurisdiction of the United States Patent and Trademark Office and open to the public, will be furnished by the United States Patent and Trademark Office to any person, and copies of other records or papers will be furnished to persons entitled thereto, upon payment of the appropriate fee. See § 2.201 of this chapter regarding copies of trademark records.

(b) Certified copies of patents, patent application publications, and of any records, books, papers, or drawings within the jurisdiction of the United States Patent and Trademark Office and open to the public or persons entitled thereto will be authenticated by the seal of the United States Patent and Trademark Office and certified by the Director, or in his or her name attested by an officer of the United States Patent and Trademark Office authorized by the Director, upon payment of the fee for the certified copy.

■ 10. Revise § 1.22 to read as follows:

§ 1.22 Fees payable in advance.

(a) Patent fees and charges payable to the United States Patent and Trademark Office are required to be paid in advance; that is, at the time of requesting any action by the Office for which a fee or charge is payable, with the exception that under § 1.53 applications for patent may be assigned a filing date without payment of the basic filing fee.

(b) All fees paid to the United States Patent and Trademark Office must be itemized in each individual application, patent, or other proceeding in such a manner that it is clear for which purpose the fees are paid. The Office may return fees that are not itemized as required by this paragraph. The provisions of § 1.5(a) do not apply to the

resubmission of fees returned pursuant to this paragraph.

■ 11. Amend § 1.26 by revising paragraph (a) to read as follows:

§ 1.26 Refunds.

(a) The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts. If a party paying a fee or requesting a refund does not provide the banking information necessary for making refunds by electronic funds transfer (31 U.S.C. 3332 and 31 CFR part 208), or instruct the Office that refunds are to be credited to a deposit account, the Director may require such information, or use the banking information on the payment instrument to make a refund. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged.

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 12. The authority citation for 37 CFR Part 2 is revised to read as follows:

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

§ 2.1 [Removed and Reserved]

■ 13. Remove and reserve § 2.1.

■ 14. Amend § 2.2 to add new paragraphs (c) through (f).

§ 2.2 Definitions.

* * * * *

(c) *Director* as used in this chapter, except for part 10, means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

(d) *Federal holiday within the District of Columbia* means any day, except Saturdays and Sundays, when the United States Patent and Trademark Office is officially closed for business for the entire day.

(e) The term *Office* means the United States Patent and Trademark Office.

(f) The acronym *TEAS* means the Trademark Electronic Application System, available online at <http://www.uspto.gov>.

■ 15. Amend § 2.6 by adding new paragraphs (b)(12) and (b)(13), to read as follows:

§ 2.6 Trademark fees.

* * * * *

(b) * * *
(12) For processing each payment refused (including a check returned “unpaid”) or charged back by a financial institution—\$50.00

(13) Deposit accounts:

(i) For establishing a deposit account—\$10.00

(ii) Service charge for each month when the balance at the end of the month is below \$1,000—\$25.00

■ 16. Revise § 2.123(f)(2) to read as follows:

§ 2.123 Trial testimony in inter partes cases.

* * * * *

(f) * * *
(2) If any of the foregoing requirements in paragraph (f)(1) of this section are waived, the certificate shall so state. The officer shall sign the certificate and affix thereto his seal of office, if he has such a seal. Unless waived on the record by an agreement, he shall then securely seal in an envelope all the evidence, notices, and paper exhibits, inscribe upon the envelope a certificate giving the number and title of the case, the name of each witness, and the date of sealing. The officer or the party taking the deposition, or its attorney or other authorized representative, shall then promptly forward the package to the address set out in § 2.190. If the weight or bulk of an exhibit shall exclude it from the envelope, it shall, unless waived on the record by agreement of all parties, be authenticated by the officer and transmitted by the officer or the party taking the deposition, or its attorney or other authorized representative, in a separate package marked and addressed as provided in this section.

* * * * *

■ 17. Immediately after § 2.186, add the following new center heading to read as follows:

General Information and Correspondence in Trademark Cases

■ 18. Add §§ 2.188 through 2.198 to read as follows:

§ 2.188 [Reserved]

§ 2.189 [Reserved]

§ 2.190 Addresses for trademark correspondence with the United States Patent and Trademark Office.

(a) *Trademark correspondence—in general.* All trademark-related documents filed on paper, except documents sent to the Assignment Services Division for recordation and

requests for copies of trademark documents, should be addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3514.

(b) *Electronic trademark documents.* An applicant may transmit a trademark document through TEAS, at <http://www.uspto.gov>.

(c) *Trademark assignments.* Requests to record documents in the Assignment Services Division may be filed through the Office’s web site, at <http://www.uspto.gov>. Paper documents and cover sheets to be recorded in the Assignment Services Division should be addressed to: Mail Stop Assignment Recordation Services, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450. See § 3.27 of this chapter.

(d) *Requests for copies of trademark documents.* Copies of trademark documents can be ordered through the Office’s web site at www.uspto.gov. Paper requests for certified or uncertified copies of trademark documents should be addressed to: Mail Stop Document Services, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

§ 2.191 Business to be transacted in writing.

All business with the Office should be transacted in writing. The personal appearance of applicants or their representatives at the Office is unnecessary. The action of the Office will be based exclusively on the written record. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt. The Office encourages parties to file documents through TEAS wherever possible.

§ 2.192 Business to be conducted with decorum and courtesy.

Trademark applicants, registrants, and parties to proceedings before the Trademark Trial and Appeal Board and their attorneys or agents are required to conduct their business with decorum and courtesy. Documents presented in violation of this requirement will be submitted to the Director and will be returned by the Director’s direct order. Complaints against trademark examining attorneys and other employees must be made in correspondence separate from other documents.

§ 2.193 Trademark correspondence and signature requirements.

(a) Since each file must be complete in itself, a separate copy of every

document to be filed in a trademark application, trademark registration file, or proceeding before the Trademark Trial and Appeal Board must be furnished for each file to which the document pertains, even though the contents of the documents filed in two or more files may be identical. Parties should not file duplicate copies of correspondence, unless the Office requires the filing of duplicate copies. The Office may dispose of duplicate copies of correspondence.

(b) Since different matters may be considered by different branches or sections of the Office, each distinct subject, inquiry or order must be contained in a separate document to avoid confusion and delay in answering correspondence dealing with different subjects.

(c)(1) Each piece of correspondence that requires a person's signature, must:

(i) Be an original, that is, have an original signature personally signed in permanent ink by that person; or

(ii) Be a copy, such as a photocopy or facsimile transmission (§ 2.195(c)), of an original. In the event that a copy of the original is filed, the original should be retained as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original; or

(iii) Where an electronically transmitted trademark filing is permitted or required, the person who signs the filing must either:

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

(B) Sign the verified statement using some other form of electronic signature specified by the Director.

(2) The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any document by a party, whether a practitioner or non-practitioner, constitutes a certification under § 10.18(b) of this chapter. Violations of § 10.18(b)(2) of this chapter by a party, whether a practitioner or non-practitioner, may result in the imposition of sanctions under § 10.18(c) of this chapter. Any practitioner violating § 10.18(b) may also be subject to disciplinary action. See §§ 10.18(d) and 10.23(c)(15).

(d) When a document that is required by statute to be certified must be filed, a copy, including a photocopy or facsimile transmission, of the certification is not acceptable.

§ 2.194 Identification of trademark application or registration.

(a) No correspondence relating to a trademark application should be filed

prior to receipt of the application serial number.

(b) (1) A letter about a trademark application should identify the serial number, the name of the applicant, and the mark.

(2) A letter about a registered trademark should identify the registration number, the name of the registrant, and the mark.

§ 2.195 Receipt of trademark correspondence.

(a) *Date of receipt and Express Mail date of deposit.* Trademark correspondence received in the Office is given a filing date as of the date of receipt except as follows:

(1) The Office is not open for the filing of correspondence on any day that is a Saturday, Sunday, or Federal holiday within the District of Columbia. Except for correspondence transmitted electronically under paragraph (a)(2) of this section or transmitted by facsimile under paragraph (a)(3) of this section, no correspondence is received in the Office on Saturdays, Sundays, or Federal holidays within the District of Columbia.

(2) Trademark-related correspondence transmitted electronically will be given a filing date as of the date on which the Office receives the transmission.

(3) Correspondence transmitted by facsimile will be given a filing date as of the date on which the complete transmission is received in the Office unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case the filing date will be the next succeeding day that is not a Saturday, Sunday, or Federal holiday within the District of Columbia.

(4) Correspondence filed in accordance with § 2.198 will be given a filing date as of the date of deposit as "Express Mail" with the United States Postal Service.

(b) *Correspondence delivered by hand.* In addition to being mailed, correspondence may be delivered by hand during hours the Office is open to receive correspondence.

(c) *Facsimile transmission.* Except in the cases enumerated in paragraph (d) of this section, correspondence, including authorizations to charge a deposit account, may be transmitted by facsimile. The receipt date accorded to the correspondence will be the date on which the complete transmission is received in the Office, unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. See § 2.196. To facilitate proper processing, each transmission session should be limited to correspondence to be filed in a single application,

registration or proceeding before the Office. The application serial number, registration number, or proceeding number should be entered as a part of the sender's identification on a facsimile cover sheet.

(d) Facsimile transmissions are not permitted and if submitted, will not be accorded a date of receipt, in the following situations:

(1) Applications for registration of marks;

(2) Drawings submitted under § 2.51, § 2.52, § 2.72, or § 2.173;

(3) Correspondence to be filed with the Trademark Trial and Appeal Board, except notices of ex parte appeal; and

(4) Requests for cancellation or amendment of a registration under section 7(e) of the Trademark Act; and certificates of registration surrendered for cancellation or amendment under section 7(e) of the Trademark Act.

(e) *Interruptions in U.S. Postal Service.* If interruptions or emergencies in the United States Postal Service which have been so designated by the Director occur, the Office will consider as filed on a particular date in the Office any correspondence which is:

(1) Promptly filed after the ending of the designated interruption or emergency; and

(2) Accompanied by a statement indicating that such correspondence would have been filed on that particular date if it were not for the designated interruption or emergency in the United States Postal Service.

§ 2.196 Times for taking action: Expiration on Saturday, Sunday or Federal holiday.

Whenever periods of time are specified in this part in days, calendar days are intended. When the day, or the last day fixed by statute or by regulation under this part for taking any action or paying any fee in the Office falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding day that is not a Saturday, Sunday, or a Federal holiday.

§ 2.197 Certificate of mailing or transmission.

(a) Except in the cases enumerated in paragraph (a)(2) of this section, correspondence required to be filed in the Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in § 2.190 and deposited with the U.S. Postal Service with sufficient postage as first class mail; or

(B) Transmitted by facsimile to the Office in accordance with § 2.195(c); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

(2) The procedure described in paragraph (a)(1) of this section does not apply to the filing of a trademark application.

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Office, and an application is abandoned, a registration is cancelled or expired, or a proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence within two months after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement that attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

(c) The Office may require additional evidence to determine whether the correspondence was timely filed.

§ 2.198 Filing of correspondence by "Express Mail."

(a)(1) Except for documents listed in paragraphs (a)(1)(i) and (ii) of this section, any correspondence received by the Office that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed with the Office on the date of deposit with the USPS. The Express Mail procedure does not apply to:

(i) Applications for registration of marks;

(ii) Amendments to allege use under section 1(c) of the Act;

(iii) Statements of use under section 1(d) of the Act;

(iv) Requests for extension of time to file a statement of use under section 1(d) of the Act;

(v) Affidavits of continued use under section 8 of the Act;

(vi) Renewal requests under section 9 of the Act; and

(vii) Requests to change or correct addresses.

(2) The date of deposit with USPS is shown by the "date in" on the "Express Mail" label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the date of receipt in the Office as the filing date.

(b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the "Express Mail" mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed within two months after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing; and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express

Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed within two months after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) prior to the original mailing; and

(3) The petition includes a showing that establishes, to the satisfaction of the Director, that the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup on the requested filing date. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or evidence that came into being within one business day after the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

(e) If correspondence is properly addressed to the Office pursuant to § 2.190 and deposited with sufficient postage in the "Express Mail Post Office to Addressee" service of the USPS, but not received by the Office, the party who mailed the correspondence may petition the Director to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed within two months after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) prior to the original mailing;

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup on the requested filing date; and

(4) The petition includes a statement that establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

(f) The Office may require additional evidence to determine whether the correspondence was deposited as "Express Mail" with the USPS on the date in question.

■ 19. Add a new center heading and §§2.200 and 2.201 to read as follows:

Trademark Records and Files of the Patent and Trademark Office

§ 2.200 Assignment records open to public inspection.

(a)(1) Separate assignment records are maintained in the Office for patents and trademarks. The assignment records relating to trademark applications and registrations (for assignments recorded on or after January 1, 1955) are open to public inspection at the Office, and copies of those assignment records may be obtained upon request and payment of the fee set forth in § 2.6 of this chapter.

(2) All records of trademark assignments recorded before January 1, 1955, are maintained by the National Archives and Records Administration (NARA). The records are open to public inspection. Certified and uncertified copies of those assignment records are provided by NARA upon request and payment of the fees required by NARA.

(b) An order for a copy of an assignment or other document should identify the reel and frame number where the assignment or document is recorded. If a document is identified without specifying its correct reel and frame, an extra charge as set forth in § 2.6(b)(10) will be made for the time consumed in making a search for such assignment.

§ 2.201 Copies and certified copies.

(a) Non-certified copies of trademark registrations and of any trademark records or trademark documents within the jurisdiction of the Office and open to the public, will be furnished by the Office to any person entitled thereto, upon payment of the appropriate fee required by § 2.6.

(b) Certified copies of trademark registrations and of any trademark records or trademark documents within

the jurisdiction of the Office and open to the public will be authenticated by the seal of the Office and certified by the Director, or in his or her name attested by an officer of the Office authorized by the Director, upon payment of the fee required by § 2.6.

■ 20. Add a new center heading and §§2.206 through 2.209 to read as follows:

Fees and Payment of Money in Trademark Cases

§ 2.206 Trademark fees payable in advance.

(a) Trademark fees and charges payable to the Office are required to be paid in advance; that is, at the time of requesting any action by the Office for which a fee or charge is payable.

(b) All fees paid to the Office must be itemized in each individual trademark application or registration file, or trademark proceeding, so that the purpose for which the fees are paid is clear. The Office may return fees that are not itemized as required by this paragraph.

§ 2.207 Methods of payment.

(a) All payments of money required in trademark cases, including fees for the processing of international trademark applications and registrations that are paid through the Office, shall be made in U.S. dollars and in the form of a cashier's or certified check, Treasury note, national bank note, or United States Postal Service money order. If sent in any other form, the Office may delay or cancel the credit until collection is made. Checks and money orders must be made payable to the Director of the United States Patent and Trademark Office. (Checks made payable to the Commissioner of Patents and Trademarks will continue to be accepted.) Payments from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required. Money sent to the Office by mail will be at the risk of the sender, and letters containing money should be registered with the United States Postal Service.

(b) Payments of money required for trademark fees may also be made by credit card. Payment of a fee by credit card must specify the amount to be charged to the credit card and such other information as is necessary to process the charge, and is subject to collection of the fee. The Office will not accept a general authorization to charge fees to a credit card. 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 becomes public knowledge.

§ 2.208 Deposit accounts.

(a) For the convenience of attorneys, and the general public in paying any fees due, in ordering copies of records, or services offered by the Office, deposit accounts may be established in the Office upon payment of the fee for establishing a deposit account (§ 2.6(b)(13)). A minimum deposit of \$1,000 is required for paying any fees due or in ordering any services offered by the Office. The Office will issue a deposit account statement at the end of each month. A remittance must be made promptly upon receipt of the statement to cover the value of items or services charged to the account and thus restore the account to its established normal deposit. An amount sufficient to cover all fees, copies, or services requested must always be on deposit. Charges to accounts with insufficient funds will not be accepted. A service charge (§ 2.6(b)(13)) will be assessed for each month that the balance at the end of the month is below \$1,000.

(b) A general authorization to charge all fees, or only certain fees to a deposit account containing sufficient funds may be filed in an individual application, either for the entire pendency of the application or with respect to a particular document filed. An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee.

(c) A deposit account holder may replenish the deposit account by submitting a payment to the Office. A payment to replenish a deposit account must be submitted by one of the methods set forth in paragraphs (c)(1), (c)(2), (c)(3), or (c)(4) of this section.

(1) A payment to replenish a deposit account may be submitted by electronic funds transfer through the Federal Reserve Fedwire System, which requires that the following information be provided to the deposit account holder's bank or financial institution:

(i) Name of the Bank, which is Treas NYC (Treasury New York City);

(ii) Bank Routing Code, which is 021030004;

(iii) United States Patent and Trademark Office account number with the Department of the Treasury, which is 13100001; and

(iv) The deposit account holder's company name and deposit account number.

(2) A payment to replenish a deposit account may be submitted by credit card or electronic funds transfer over the Office's Internet Web site (<http://www.uspto.gov>).

(3) A payment to replenish a deposit account may be submitted by mail with the USPS to: Director of the United States Patent and Trademark Office, P.O. Box 70541, Chicago, Illinois 60673.

(4) A payment to replenish a deposit account may be submitted by mail with a private delivery service or hand-carrying the payment to: Director of the United States Patent and Trademark Office, Deposit Accounts, One Crystal Park, Suite 307, 2011 Crystal Drive, Arlington, Virginia 22202.

§ 2.209 Refunds.

(a) The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a trademark application, appeal or other trademark filing for which a fee was paid, will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts. If a party paying a fee or requesting a refund does not provide the banking information necessary for making refunds by electronic funds transfer (31 U.S.C. 3332 and 31 CFR part 208), or instruct the Office that refunds are to be credited to a deposit account, the Director may require such information, or use the banking information on the payment instrument to make a refund. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged.

(b) Any request for refund must be filed within two years from the date the fee was paid, except as otherwise provided in this paragraph. If the Office charges a deposit account by an amount other than an amount specifically indicated in an authorization (§ 2.208(b)), any request for refund based upon such charge must be filed within two years from the date of the deposit account statement indicating such charge, and include a copy of that deposit account statement. The time periods set forth in this paragraph are not extendable.

Dated: August 5, 2003.

Jon W. Dudas,

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

[FR Doc. 03-20489 Filed 8-12-03; 8:45 am]

BILLING CODE 3510-16-P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2003-1; Order No. 1380]

Additional Filing Requirements

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: This document adopts, essentially as proposed, a rule that requires the Postal Service to provide overview testimony. The testimony must discuss how other testimony in a case interrelates and identify material changes affecting cost attribution, volume projections and rate design. This additional explanation and detail will assist the Commission and case participants in more readily understanding complex filings without unduly burdening the Postal Service.

DATES: This rule takes effect October 1, 2003.

ADDRESSES: Submit correspondence concerning this document to Steven W. Williams, Secretary of the Commission, via the Commission's electronic Filing Online system.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, 202-789-6818.

SUPPLEMENTARY INFORMATION:

Regulatory History

See 67 FR 79538 (12/30/2002).

Introduction

In order no. 1355, the Commission proposed to amend its rules of practice in two principal ways.¹ First, the proposed rulemaking would require the Postal Service to submit testimony of a single witness providing an overview (or roadmap) of its request, which, among other things, would both explain the interrelationship of the testimony submitted in support of the filing and highlight all methodological changes. See proposed rule 53(b). Second, the rules would be clarified regarding the Postal Service's obligation to submit testimony addressing material methodological changes affecting

costing, volume projections, or rate design. See proposed rules 53(c) and 54(a). Interested persons were invited to comment on the proposed rules.

Six sets of initial comments were received,² plus four sets of reply comments.³ Aside from the Postal Service, all initial commenters supported the proposed rule. For its part, the Postal Service, while expressing concerns about the proposed rule changes, characterizes itself as "generally sympathetic to the proclaimed need for a better overview of its case[.]"⁴

Its principal concern lay with the form of the roadmap, favoring an institutional document over testimony. *Id.* at 3-6. To that end, the Postal Service offers an alternative version of the proposed rules. It also outlines its concept of the roadmap document as well as expressing concerns regarding the details associated with reporting methodological changes. *Id.* at 6-25.

Other commenters also suggest revisions to the proposed rule. For example, OCA suggests that the Postal Service be required to quantify the impact of every methodological change. In a similar vein, ABA/NAPM urge the Commission to quantify the meaning of material changes. See OCA Comments at 3-6 and ABA/NAPM Comments at 2. UPS suggests revisions to the proposed rules regarding details reported by the Postal Service. UPS Comments at 4.

This rulemaking grew out of the Ratemaking Summit, jointly sponsored by the Commission and the Postal

² See Comments of Alliance of Nonprofit Mailers, American Business Media, AOL Time Warner, Inc., Dow Jones & Company, Inc., Magazine Publishers of America, Inc., The McGraw-Hill Companies, and National Newspaper Association, February 12, 2003, (Joint Comments); Letter on Behalf of American Bankers Association and National Association of Presort Mailers, February 12, 2003, (ABA/NAPM Comments); Comments of American Postal Workers Union, AFL-CIO Regarding Notice of Proposed Rulemaking Concerning Evidence Supporting Rate and Classification Changes, January 15, 2003, (APWU Comments); Office of the Consumer Advocate Comments on Notice of Proposed Rulemaking Concerning Evidence Supporting Rate and Classification Changes, February 12, 2003, (OCA Comments); Comments of United Parcel Service in Support of Proposed Rule, February 11, 2003, (UPS Comments); and Initial Comments of the United States Postal Service, February 12, 2003, (Postal Service Comments).

³ See Letter on Behalf of American Bankers Association and National Association of Presort Mailers, February 26, 2003, (ABA/NAPM Reply Comments); Office of the Consumer Advocate Reply Comments on Notice of Proposed Rulemaking Concerning Evidence Supporting Rate and Classification Changes, February 26, 2003, (OCA Reply Comments); Reply Comments of PostCom, February 20, 2003; (PostCom Reply Comments); and Reply Comments of the United States Postal Service, February 26, 2003, (Postal Service Reply Comments).

⁴ Postal Service Comments at 1.

¹ See Notice of Proposed Rulemaking Concerning Evidence Supporting Rate and Classification Changes, PRC Order No. 1355, December 13, 2002.