

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****Fair Market Value Analysis for a Fiber Optic Cable Permit in National Marine Sanctuaries**

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of availability.

**SUMMARY:** Notice is hereby given that NOAA is requesting comments on the report "Fair Market Value Analysis for a Fiber Optic Cable Permit in National Marine Sanctuaries" and two peer reviews of this report. The report and peer reviews are available for download at <http://www.sanctuaries.nos.noaa.gov/news/newsboard/newsboard.html> or by requesting an electronic or hard copy. Requests can be made by sending an email to [submarine.cables@noaa.gov](mailto:submarine.cables@noaa.gov) (subject line "Request for Fair Market Value Analysis") or by calling Matt Brookhart at (301) 713-3125 x140.

**DATES:** Comments on this notice must be received by January 18, 2001.

**ADDRESSES:** Address all comments regarding this notice to Matt Brookhart, Conservation Policy and Planning Branch, Office of National Marine Sanctuaries, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910, Attention: Fair Market Value Analysis. Comments may also be submitted by email to: [submarine.cables@noaa.gov](mailto:submarine.cables@noaa.gov), subject line "Fair Market Value Analysis."

**FOR FURTHER INFORMATION CONTACT:** Helen Golde, (301) 713-3125 x152.

**SUPPLEMENTARY INFORMATION:** The Office of National Marine Sanctuaries has issued several special-use permits to companies seeking to install fiber optic cables in National Marine Sanctuaries. The Sanctuary statute allows ONMS to permit the presence of cables on the sanctuaries' seafloor should it decide to do so. If an application is approved, ONMS may collect certain administrative and monitoring fees. In addition, ONMS is entitled to receive fair market value for the permitted use of sanctuary resources.

The report "Fair Market Value Analysis for a Fiber Optic Cable Permit in National Marine Sanctuaries" presents an assessment of fair market value for the use of National Marine Sanctuary resources for a fiber optic cable. Proper stewardship of sanctuary resources and open and equitable

relations with telecommunication industry interests require a clear and consistent policy in this matter. The content of this report is based on dozens of industry and government sources and draws on the collaboration and review of numerous experts in the business, legal and technical arenas.

Once finalized, the fee structure proposed in this report will be used to assess fees (as stated in their respective special use permits) for cables already installed in the Olympic Coast and Stellwagen Bank National Marine Sanctuaries. In addition, this structure will provide the basis for future fair market value assessment of submarine cable permit applications in National Marine Sanctuaries. Comments on the report and peer reviews should focus on the methodology employed and the conclusions that it reached.

Dated: December 29, 2000.

**John Oliver,**

*Chief Financial Officer, National Ocean Service.*

[FR Doc. 01-387 Filed 1-4-01; 8:45 am]

**BILLING CODE 3510-08-P**

**DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**

**[Docket No. 991027289-0263-02]**

**RIN 0651-AB09**

**Utility Examination Guidelines**

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

**ACTION:** Notice.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is publishing a revised version of guidelines to be used by Office personnel in their review of patent applications for compliance with the "utility" requirement of 35 U.S.C. 101. This revision supersedes the Revised Interim Utility Examination Guidelines that were published at 64 FR 71440, Dec. 21, 1999; 1231 O.G. 136 (2000); and correction at 65 FR 3425, Jan. 21, 2000; 1231 O.G. 67 (2000).

**DATES:** The Guidelines are effective as of January 5, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mark Nagumo by telephone at (703) 305-8666, by facsimile at (703) 305-9373, by electronic mail at "[mark.nagumo@uspto.gov](mailto:mark.nagumo@uspto.gov)," or by mail marked to his attention addressed to the Office of the Solicitor, Box 8, Washington, DC 20231; or Linda Therkorn by telephone at (703) 305-9323, by facsimile at (703) 305-8825, by

electronic mail at "[linda.therkorn@uspto.gov](mailto:linda.therkorn@uspto.gov)," or by mail marked to her attention addressed to Box Comments, Commissioner for Patents, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** As of the publication date of this notice, these Guidelines will be used by USPTO personnel in their review of patent applications for compliance with the "utility" requirement of 35 U.S.C. 101. Because these Guidelines only govern internal practices, they are exempt from notice and comment rulemaking under 5 U.S.C. 553(b)(A).

**I. Discussion of Public Comments**

The Revised Interim Utility Examination Guidelines published at 64 FR 71440, Dec. 21, 1999; 1231 O.G. 136, Feb. 29, 2000, with a correction at 65 FR 3425, Jan. 21, 2000; 1231 O.G. 67, Feb. 15, 2000, requested comments from the public. Comments were received from 35 individuals and 17 organizations. The written comments have been carefully considered.

**Overview of Comments**

The majority of comments generally approved of the guidelines and several expressly stated support for the three utility criteria (specific, substantial, and credible) set forth in the Guidelines. A few comments addressed particular concerns with respect to the coordinate examiner training materials that are available for public inspection at the USPTO website, [www.uspto.gov](http://www.uspto.gov). The comments on the training materials will be taken under advisement in the revision of the training materials. Consequently, those comments are not specifically addressed below because they do not impact the content of the Guidelines. Comments received in response to the request for comments on the "Revised Interim Guidelines for Examination of Patent Applications Under the 35 U.S.C. 112, ¶1 'Written Description' Requirement," 64 FR 71427, Dec. 21, 1999; 1231 O.G. 123, Feb. 29, 2000, which raised issues pertinent to the utility requirement are also addressed below.

**Responses to Specific Comments**

(1) *Comment:* Several comments state that while inventions are patentable, discoveries are not patentable. According to the comments, genes are discoveries rather than inventions. These comments urge the USPTO not to issue patents for genes on the ground that genes are not inventions. *Response:* The suggestion is not adopted. An inventor can patent a discovery when the patent application satisfies the statutory requirements. The U.S.