

within 3 business days. The plan's investment firm deposits the employee 401(k) deferral funds into the plan on the day received from B. The assets of B's 401(k) plan would include the participant contributions no later than 3 business days after the issuance of paychecks.

(3) Employer C sponsors a self-insured contributory group health plan with 90 participants. Several former employees have elected, pursuant to the provisions of ERISA section 602, 29 U.S.C. 1162, to pay C for continuation of their coverage under the plan. These checks arrive at various times during the month and are deposited in the employer's general account at bank Z. Under paragraphs (a) and (b) of this section, the assets of the plan include the former employees' payments as soon after the checks have cleared the bank as C could reasonably be expected to segregate the payments from its general assets, but in no event later than 90 days after the date on which the former employees' participant contributions are received by C. If however, C deposits the former employees' payments with the plan no later than the 7th business day following the day on which they are received by C, the former employees' participant contributions will be deemed to be contributed to the plan on the earliest date on which such contributions can reasonably be segregated from C's general assets.

* * * * *

Signed at Washington, DC, this 21st day of February, 2008.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration Department of Labor.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO-T-2007-0051]

RIN 0651-AC18

Changes in Rules Regarding Filing Trademark Correspondence by Express Mail or Under a Certificate of Mailing or Transmission

AGENCY: United States Patent and Trademark Office, Commerce.

ACTIONS: Proposed rule.

SUMMARY: The United States Patent and Trademark Office ("Office") proposes to amend the Trademark Rules of Practice

to provide that the procedures for filing trademark correspondence by Express Mail or under a certificate of mailing or transmission do not apply to certain specified documents for which an electronic form is available in the Trademark Electronic Application System ("TEAS"). The purpose of the rule change is to promote electronic filing, increase efficiency, and improve the quality and integrity of critical data in the Office's automated systems.

DATES: Comments must be received by April 29, 2008 to ensure consideration.

ADDRESSES: The Office prefers that comments be submitted via electronic mail message to TMMailingRules@uspto.gov. Written comments may also be submitted by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, attention Mary Hannon; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia, attention Mary Hannon; or by electronic mail message via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (<http://www.regulations.gov>) for additional instructions on providing comments via the Federal eRulemaking Portal. The comments will be available for public inspection on the Office's Web site at <http://www.uspto.gov>, and will also be available at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia.

FOR FURTHER INFORMATION: Contact Mary Hannon, Office of the Commissioner for Trademarks, by telephone at (571) 272-9569.

SUPPLEMENTARY INFORMATION: References below 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. References to "TMEP" or "Trademark Manual of Examining Procedure" refer to the 5th edition, September 2007.

Express Mail Procedure

Section 2.198 of the Trademark Rules of Practice provides a procedure for obtaining a filing date as of the date that correspondence is deposited with the United States Postal Service ("USPS") as "Express Mail." Currently, § 2.198(a)(1) provides that the Express Mail procedure does not apply to the following documents for which an electronic form is available in TEAS: applications for registration of marks; amendments to allege use under section 1(c) of the Trademark Act; statements of use under section 1(d) of the Act; requests for extension of time to file a

statement of use under section 1(d) of the Act; affidavits or declarations of use under section 8 of the Act; renewal applications under section 9 of the Act; and requests to change or correct addresses. If any of these documents are filed by Express Mail, they are given a filing date as of the date of receipt in the Office (Eastern time) rather than the date of deposit with the USPS. These exclusions have been in effect since June 24, 2002. See notice at 67 FR 36099 (May 23, 2002). The Express Mail procedure also does not apply to responses to notices of irregularity under § 7.14 and requests for transformation under § 7.31, pursuant to § 7.4(b)(2).

The Office proposes to amend § 2.198(a)(1) to add exclusions for the following additional documents for which a form is available in TEAS: Preliminary amendments; responses to examining attorneys' Office actions; requests for reconsideration after final action; responses to suspension inquiries or letters of suspension; petitions to revive abandoned applications under 37 CFR 2.66; requests for express abandonment of applications; affidavits or declarations of incontestability under section 15 of the Act; requests for amendment of registrations under section 7(e) of the Act; requests for correction of applicants' mistakes under section 7(h) of the Act; Madrid-related correspondence filed under § 7.11, § 7.14, § 7.21, § 7.28 or § 7.31; appointments or revocations of attorney or domestic representative; and notices of withdrawal of attorney.

The Office further proposes to amend § 7.4 to provide that international applications under § 7.11 and subsequent designations under § 7.21, when filed by mail, will be accorded a filing date as of the date of receipt in the Office (Eastern time) rather than the date of deposit as Express Mail.

Certificate of Mailing or Transmission Procedure

Under 37 CFR 2.197, a "certificate of mailing or transmission" procedure exists to avoid lateness due to mail delay. Correspondence is given a filing date as of the date of receipt in the Office, but is considered to be timely even if received after the due date, if the correspondence was: (1) Deposited with the USPS as first class mail or transmitted to the Office by facsimile transmission on or before the due date; and (2) accompanied by a certificate attesting to the date of deposit or transmission. Currently, this procedure may be used for all trademark correspondence except applications for

registration of marks and correspondence related to the Madrid Protocol under §§ 7.11, 7.14, 7.21, 7.23, 7.24 and 7.31. In limited circumstances, certificates of transmission by electronic mail are permissible. *See Trademark Manual of Examining Procedure* (“TMEP”) sections 304.01 and 304.02 regarding the types of trademark correspondence that can be filed by e-mail.

The Office proposes to amend § 2.197(a)(2) to provide that the certificate of mailing and certificate of transmission procedures do not apply to the following documents for which an electronic form is available in TEAS: Amendments to allege use; statements of use; requests for extension of time to file a statement of use; preliminary amendments; responses to examining attorneys’ Office actions; requests for reconsideration after final action; responses to suspension inquiries or letters of suspension; petitions to revive abandoned applications under 37 CFR 2.66; requests for express abandonment of applications; affidavits or declarations of use under section 8 of the Act; renewal applications under section 9 of the Act; affidavits or declarations of incontestability under section 15 of the Act; requests for amendment of registrations under section 7(e) of the Act; requests for correction of applicants’ mistakes under section 7(h) of the Act; appointments or revocations of attorney or domestic representative; notices of withdrawal of attorney; and requests to change or correct addresses.

Benefits of Proposed Change

The certificate of mailing, certificate of transmission, and Express Mail procedures were created to respond to public concern about the loss of filing dates due to mail delays or loss of documents within the Office. These procedures are no longer necessary because electronic filing provides a better alternative.

Applicants, registrants, and their attorneys can ensure a “date certain” for a document by filing through TEAS, which is available 24 hours a day, 7 days a week. Under § 2.195(a)(2), correspondence filed via TEAS is considered to have been filed on the date that the Office receives a complete transmission of the correspondence, regardless of whether that date is a Saturday, Sunday, or a Federal holiday within the District of Columbia.

Unlike Express Mail and certificates of mailing/transmission, TEAS assures filers that the Office actually received the document submitted. When a document is filed electronically, the

Office receives it within seconds after filing, and TEAS almost immediately displays a “Success” page confirming receipt, which may be printed or copied and pasted into an electronic record for storage. This page provides the filer with evidence of filing should any question ever arise as to the filing date of the document. If the “Success” page does not appear within seconds, then the filing was not completed successfully. Thus, no doubt exists as to whether a document was transmitted successfully. TEAS also sends a separate e-mail acknowledgment of receipt that includes a summary of the filed information and general processing information.

TEAS documents are extremely unlikely to be lost or misplaced within the Office. Electronic filing creates an automatic entry of receipt of the filing into the Office’s automated system, which prevents improper abandonment or cancellation due to delays in matching papers with files. The Office has experienced very few situations in which parties claim that electronically filed documents have been lost. In fact, in almost all instances in which parties have claimed that electronically filed documents have been lost, the Office has later determined that although the party successfully validated the intended filing, the party never successfully completed the actual electronic transmission process and never got a “Success” page.

When a document is filed electronically, the data provided by the applicant is transferred directly into the Office’s databases, so very few, if any, data entry errors arise. This assures customers that their application/registration files are complete; and improves the quality, accuracy and completeness of the information available to the public in Office databases.

Because electronic filing eliminates delays caused by mailing, manual data capture and paper processing, TEAS documents are processed more quickly and entered into the automated systems (and therefore made available to Office employees and members of the public who search Office records for conflicting marks) sooner than their paper counterparts. This increases efficiency, reduces pendency, and enables the Office to provide a higher level of customer service to all applicants and registrants. Electronic filing provides a level of consistency, accuracy, and predictability that a paper-based process cannot.

In those rare situations when TEAS is unavailable due to technical problems, mechanisms are in place to obtain a

filing date as of the date of the attempted filing. The filer may provide evidence that the filing was attempted through TEAS but TEAS was unavailable due to technical problems, such as a computer screen printout showing receipt of a “Fatal Error—Access Denied” error message, or a copy of an e-mail message from the TEAS Help Desk stating that the TEAS application forms were temporarily unavailable. *See* TMEP sections 1711, 1712.01 and 1712.02.

Rule Making Requirements

Executive Order 12866: This rule has been determined not to be significant for purposes of Executive Order 12866.

Administrative Procedure Act: This rule merely involves rules of agency practice and procedure within the meaning of 5 U.S.C. 553(b)(A). Therefore, this rule may be adopted without prior notice and opportunity for public comment under 5 U.S.C. 553(b) and (c), or thirty-day advance publication under 5 U.S.C. 553(d). However, the Office has chosen to seek public comment before implementing the rule.

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), neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. *See* 5 U.S.C. 603.

Unfunded Mandates: The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, and tribal governments or the private sector.

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).

Paperwork Reduction Act: This notice involves information collection requirements which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information in this notice have been reviewed and approved by the OMB under OMB control numbers: 0651–0009, 0651–0054, 0651–0055 and 0651–0056.

The agency is not resubmitting an information collection package to OMB

for its review and approval because the changes in this notice are limited to amending the rules of practice to support further implementation of the Office's Trademark Electronic Application System.

Interested persons are requested to send comments regarding these information collections, including suggestions for reduction of this burden to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office; and (2) Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 (Attn: Mary Hannon).

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

List of Subjects

37 CFR Part 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 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the Office proposes to amend 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 § 2.197 by revising paragraph (a)(2) to read as follows:

§ 2.197 Certificate of mailing or transmission.

(a) * * *

(2) The procedure described in paragraph (a)(1) of this section does not apply to:

- (i) Applications for the 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) Preliminary amendments;
(vi) Responses to examining attorneys' Office actions;

(vii) Requests for reconsideration after final action;

(viii) Responses to suspension inquiries or letters of suspension;

(ix) Petitions to revive abandoned applications under § 2.66;

(x) Requests for express abandonment of applications;

(xi) Affidavits or declarations of use under section 8 of the Act;

(xii) Renewal applications under section 9 of the Act;

(xiii) Affidavits or declarations of incontestability under section 15 of the Act;

(xiv) Requests for amendment of registrations under section 7(e) of the Act;

(xv) Requests for correction of applicants' mistakes under section 7(h) of the Act;

(xvi) Madrid-related correspondence filed under § 7.11, § 7.14, § 7.21, § 7.23, § 7.24, § 7.28 or § 7.31;

(xvii) Appointments or revocations of attorney or domestic representative;

(xviii) Notices of withdrawal of attorney; and

(xix) Requests to change or correct addresses.

* * * * *

3. Amend § 2.198 by revising paragraphs (a)(1)(v), (vi) and (vii), and adding new paragraphs (a)(1)(viii) through (xix), to read as follows:

§ 2.198 Filing of correspondence by "Express Mail."

(a)(1) * * *

(v) Preliminary amendments;

(vi) Responses to examining attorneys' Office actions;

(vii) Requests for reconsideration after final action;

(viii) Responses to suspension inquiries or letters of suspension;

(ix) Petitions to revive abandoned applications under § 2.66;

(x) Requests for express abandonment of applications;

(xi) Affidavits or declarations of use under section 8 of the Act;

(xii) Renewal applications under section 9 of the Act;

(xiii) Affidavits or declarations of incontestability under section 15 of the Act;

(xiv) Requests for amendment of registrations under section 7(e) of the Act;

(xv) Requests for correction of applicants' mistakes under section 7(h) of the Act;

(xvi) Madrid-related correspondence filed under § 7.11, § 7.14 § 7.21, § 7.28 or § 7.31;

(xvii) Appointments or revocations of attorney or domestic representative;

(xviii) Notices of withdrawal of attorney; and

(xix) Requests to change or correct addresses.

* * * * *

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

4. 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.

5. Amend § 7.4 by revising paragraphs (b)(1) and (2) to read as follows:

§ 7.4 Receipt of correspondence.

* * * * *

(b) * * *

(1) Requests to record changes in the International Register under § 7.23 and § 7.24, and petitions to the Director to review an action of the Office's Madrid Processing Unit, when filed by mail, will be accorded the date of receipt in the Office, unless they are sent by Express Mail pursuant to § 2.198 of this chapter, in which case they will be accorded the date of deposit with the United States Postal Service.

(2) International applications under § 7.11, responses to notices of irregularity under § 7.14, subsequent designations under § 7.21, requests to note replacement under § 7.28, and requests for transformation under § 7.31, when filed by mail, will be accorded the date of receipt in the Office.

* * * * *

Dated: February 22, 2008.

Jon W. Dudas,

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

[FR Doc. E8-3929 Filed 2-28-08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

43 CFR Part 11

RIN 1090-AA97

Natural Resource Damages for Hazardous Substances

AGENCY: Department of the Interior.

ACTION: Proposed rulemaking.

SUMMARY: We are proposing to revise certain parts of the natural resource damage assessment regulations for