**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL WI E5 Eau Claire, WI [Revised]**

Chippewa Valley Regional Airport, WI
(Lat. 44°51′55″ N., long. 091°29′06″ W.)
Eau Claire VORTAC
(Lat. 44°53′52″ N., long. 091°28′43″ W.)
Luther Hospital, WI
Point In Space Coordinates
(Lat. 44°48′24″ N., long. 091°31′51″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Chippewa Valley Regional Airport and within 1.9 miles each side of the southwest localizer course extending from the 6.7-mile radius to 13.2 miles southwest of the airport, and within 3.1 miles each side of the Eau Claire VORTAC 004° radial extending from the 6.7-mile radius to 9.6 miles north of the airport, and within a 6.0-mile radius of the point in space serving Luther Hospital.

* * * * *

Issued in Des Plaines, Illinois on April 26, 1999.

**Christopher R. Blum,**

*Manager, Air Traffic Division.*

[FR Doc. 99–11869 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–120168–97]**

**RIN 1545–AW73**

## Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibilty; Hearing Cancellation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document provides notice of cancellation of a public hearing on proposed regulations relating to the due diligence requirements in determining eligibility for the earned income credit for paid preparers of federal income tax returns or claims for refund.

**DATES:** The public hearing originally scheduled for Thursday, May 20, 1999, at 10 a.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking by cross-reference to temporary regulations, and notice of public hearing that appeared in the **Federal Register** on Monday, December 21, 1998 (63 FR 70357), announced that a public hearing was scheduled for Thursday, May 20, 1999, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 6695 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Monday, March 22, 1999. The outlines of topics to be addressed at the hearing were due on Thursday, April 29, 1999.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of May, 5, 1999, no one has requested to speak. Therefore, the public hearing scheduled for Thursday, May 20, 1999, is cancelled.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 99–11756 Filed 5–10–99; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## 37 CFR Parts 1, 2, 3 and 6

**[Docket No. 990401084–9084–01]**

**RIN 0651–AB00**

## Trademark Law Treaty Implementation Act Changes

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

**ACTION:** Notice of proposed rulemaking; Notice of hearing.

**SUMMARY:** The Patent and Trademark Office (Office) proposes to amend its rules to implement the Trademark Law Treaty Implementation Act of 1998 (TLTIA), Pub. L. No. 105–330, 112 Stat. 3064 (15 U.S.C. 1051), and to otherwise simplify and clarify procedures for registering trademarks, and for maintaining and renewing trademark registrations.

**DATES:** Comments must be received by June 25, 1999 to ensure consideration. A public hearing will be held at 10:00 a.m., June 10, 1999, in the South Tower Building, 1st floor, 2900 Crystal Drive, Arlington, Virginia 22202–3513. Submit requests to present oral testimony on or before June 3, 1999.

**ADDRESSES:** Mail comments to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513, attention Mary Hannon; fax comments to (703) 308–9395, attention Mary Hannon; or email comments to *tltia.comments@uspto.gov*. Copies of all comments will be available for public inspection in Suite 10B10, South Tower Building, 10th floor, 2900 Crystal Drive, Arlington, Virginia 22202–3513, from 8:30 a.m. until 5:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Mary Hannon, Office of Assistant Commissioner for Trademarks, (703) 308–8910, ext. 37.

**SUPPLEMENTARY INFORMATION:** TLTIA implements the Trademark Law Treaty (TLT). The purpose of TLT is to make the procedural requirements of the different national trademark offices more consistent.

TLTIA was enacted October 30, 1998. Title I of TLTIA, which contains the provisions that implement the treaty, will become effective October 30, 1999.

References below to ''the Act,'' ''the Trademark Act'' or ''the statute'' refer to the Trademark Act of 1946, as amended, 15 U.S.C. 1051 *et seq.* ''TMEP'' is the *Trademark Manual of Examining Procedure* (2nd ed., Rev. 1.1, August 1997).

**Application Filing Dates**

TLTIA § 103 adds §§ 1(a)(4) and 1(b)(4) of the Act to give the Office authority to establish and change filing date requirements. The Office proposes to eliminate several of the current minimum requirements necessary to receive a filing date. The goal is to make it easier for applicants to obtain filing dates, but also to ensure that the Office has enough information to begin examination, and to provide third parties who search Office records with accurate information about pending applications.

The Office proposes the following minimum filing requirements for granting a filing date: (1) the name of the applicant; (2) a name and address for correspondence; (3) a clear drawing of the mark; (4) a list of the goods or services; and (5) the filing fee for at least one class of goods or services.

Section 44(e) of the Act, as amended, no longer requires that a certified copy of the foreign registration accompany an application based on § 44(e). The Office proposes to require submission of the foreign certificate before the mark is published for opposition or approved for registration on the Supplemental Register.

The Office also proposes to eliminate the current filing date requirements for an allegation of the applicant's use or bona fide intention to use the mark in commerce; for a specimen, and date of first use in commerce in a § 1(a) application; and for a signature. These elements will be required before the mark is published for opposition or approved for registration on the Supplemental Register.

**Bulky Specimens**

Proposed § 2.56(d)(1) requires that specimens be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. This is consistent with current § 2.56. The Office proposes to add § 2.56(d)(2), stating that if an applicant submits a specimen that exceeds the size requirement (a ''bulky specimen''), the Office will create a facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long), insert it in the application file wrapper, and destroy the original bulky specimen.

Currently, when an applicant submits a specimen that does not conform to the requirements of § 2.56 (i.e., is not flat, exceeds the size limitation, etc.), the Office retains the specimen even though it is impossible to attach it to the application file wrapper. This requires substantial special handling because the Office must store and track the specimens separately from the application file wrappers. Because the number of newly filed applications has increased from approximately 83,000 to over 233,000 per year over the past ten years, and the number of pending applications has increased from less than 100,000 to over 350,000 in the same period, it has become increasingly difficult to ensure that the bulky specimens follow the application files. As the number of applications has increased, bulky materials submitted as specimens have also increased, requiring an increased use of limited resources to handle the bulky materials. Further, because specimens of this nature are often misplaced or lost during examination processing, the Office must then require new specimens, slowing examination and inconveniencing applicants.

Because the requirement for flat specimens can be easily satisfied through the use of photographs, photocopies, or other means of reproduction, the Office will no longer retain bulky materials submitted as specimens. In very limited circumstances, the Office will continue to accept specimens consisting of videotapes, audiotapes, CDs, computer diskettes, and similar materials where there are no non-bulky alternatives, and the submission is the only means available for showing use of the mark.

**Number of Specimens Required**

The Office proposes to amend §§ 2.56(a), 2.76(b)(2), 2.86(b), and 2.88(b)(2) to require one rather than three specimens with an application under § 1 of the Act, or an amendment to allege use or statement of use of a mark in an application under § 1(b) of the Act. The Office previously required three specimens so that an interested party, such as a potential opposer, could permanently remove a specimen from an application file, yet not leave the file without specimens. TMEP § 905.01. However, multiple copies of specimens are no longer necessary because the public may make photocopies of a single specimen.

**Person Who May Sign Verified Statement**

Currently, §§ 1(a)(1)(A) and 1(b)(1)(A) of the Act require that an application by a juristic applicant be signed ''by a member of the firm or an officer of the corporation or association applying.'' TLTIA § 103 amends §§ 1(a) and 1(b) of the Act to eliminate the specification of the appropriate person to sign on behalf of an applicant. The legislative history states:

> Under the existing provision, the Patent and Trademark Office has been limited to accepting, for example, only the signature of an officer of a corporation on an application when another corporate manager's signature would be appropriate because the corporate manager has specific knowledge of the facts asserted in the application. The unnecessary rigidity of the existing provision has worked a hardship on applicants who have been denied filing dates because the person verifying their application has not met the strict requirement of being an officer of the corporate applicant. Additionally, the Patent and Trademark Office has had difficulty applying the officer requirement to foreign juristic entities whose managers are not clearly officers under the United States corporate standards.

H.R. Rep. No. 194, 105th Cong., 1st Sess. 12 (1997).

Proposed §§ 2.33(a)(2), 2.76(b)(1), 2.88(b)(1), 2.89(a)(3), and 2.89(b)(3) require that a person properly authorized to sign on behalf of the applicant sign the verification. Proposed § 2.33(a)(2) states that a person who is properly authorized to sign on behalf of the applicant includes a person with legal authority to bind the applicant and/or a person with firsthand knowledge and actual or implied authority to act on behalf of the applicant.

The same principles apply to the verification of an affidavit or declaration of continued use or excusable nonuse under § 8 of the Act. Proposed § 2.161(b) requires that a person properly authorized to sign on behalf of the owner sign the verification. Proposed § 2.161(b)(2) states that a person who is properly authorized to sign on behalf of the owner includes a person with legal authority to bind the owner and/or a person with firsthand knowledge and actual or implied authority to act on behalf of the owner.

**Filing by Owner**

Although TLTIA amends the statute to eliminate the specification of the proper party to sign on behalf of an applicant or registrant, the statute still requires that the owner of the mark file an application for registration, amendment to allege use, statement of use, request for extension of time to file a statement of use, and § 8 affidavit. See sections 1(a)(1), 1(b)(1), 1(d)(1), 1(d)(2), and 8(b) of the Act.

TLTIA § 105 amends § 8 of the Act to require that the owner of the mark file an affidavit of continued use or excusable nonuse within the time period set forth in § 8(a) of the Act. The legislative history states:

Throughout the revised section 8, the term ''registrant'' has been replaced by the term ''owner.'' The practice at the Patent and Trademark Office has been to require that the current owner of the registration file all the post-registration affidavits needed to maintain a registration. The current owner of the registration must aver to actual knowledge of the use of the mark in the subject registration. However, the definition of ''registrant'' in section 45 of the Act states that the ''terms 'applicant' and 'registrant' embrace the legal representatives, predecessors, successors and assigns of each applicant and registrant.'' Therefore, use of the term ''registrant'' in section 8 of the Act would imply that any legal representative, predecessor, successor or assign of the registrant could successfully file the affidavits required by sections 8 and 9. To correct this situation, and to keep with the general principal [sic], as set out in section 1, that the owner is the proper person to prosecute an application, section 8 has been amended to state that the owner must file the affidavits required by the section.

H.R. Rep. No. 194, 105th Cong., 1st Sess. 18–19 (1997).

Therefore, the Office proposes to amend §§ 2.163(a) and 2.164(b) to make it clear that filing by the owner is a minimum requirement that cannot be cured after expiration of the filing period set forth in § 8 of the Act.

Sections 1(a) and 1(b) of the Act require that an application for registration of a mark be filed by the owner. Therefore, the Office also proposes to add new § 2.71(d), stating that although a mistake in setting out the applicant's name can be corrected, the application cannot be amended to set forth a different entity as the applicant; and that an application is void if it is filed in the name of an entity that did not own the mark as of the filing date of the application. This codifies current practice. TMEP § 802.07. *Huang* v. *Tzu Wei Chen Food Co. Ltd.*, 7 USPQ2d 1335 (Fed. Cir. 1988) (application filed in name of individual two days after mark was acquired by newly formed corporation held void); *Accu Personnel Inc.* v. *Accustaff Inc.*, 38 USPQ2d 1443 (TTAB 1996) (application filed in name of entity that did not yet exist not void); *In re Tong Yang Cement Corp.*, 19 USPQ2d 1689 (TTAB 1991) (application filed by joint venturer void where mark owned by joint venture); *U.S. Pioneer Electronics Corp.* v. *Evans Marketing, Inc.*, 183 USPQ 613 (Comm'r Pats. 1974) (misidentification of applicant's name may be corrected).

The Office also proposes to amend §§ 2.88(e)(3), 2.89(a)(3), and 2.89(b)(3) to state that if a statement of use or request for an extension of time to file a statement of use is unsigned or signed by the wrong party, a substitute verification must be submitted before the expiration of the statutory period for filing the statement of use. This is consistent with current practice. See TMEP §§ 1105.05(f)(i)(A) and 1105.05(d). Sections 1(d) (1) and (2) of the Act require verification by the owner within the statutory period for filing the statement of use. Therefore, the Office cannot extend or waive the deadline for filing the verification. *In re Kinsman*, 33 USPQ2d 1057 (Comm'r Pats. 1993).

**Revival of Abandoned Applications**

TLTIA §§ 103 and 104 amend §§ 1(d)(4) and 12(b) of the Act to permit the revival of an abandoned application where the delay in responding to an Office action or notice of allowance is ''unintentional.'' Currently, an abandoned application can be revived only if the delay was ''unavoidable,'' a much stricter standard. The ''unavoidable delay'' standard has been removed from the statute. See the discussion below of the proposed amendments to § 2.66 for the requirements for filing a petition to revive.

**Post Registration**

*Statutory Changes*

TLTIA §§ 105 and 106 amend: (1) § 8 of the Act, 15 U.S.C. 1058, to add a requirement for filing an affidavit or declaration of continued use or excusable nonuse (§ 8 affidavit) in the year before the end of every ten-year period after the date of registration; and (2) § 9 of the Act, 15 U.S.C. 1059, to delete the requirement for a declaration of continued use or excusable nonuse in a renewal application. Thus, every tenth year, the owner of a registration must file both a § 8 affidavit and a renewal application.

The statutory filing periods for the ten-year § 8 affidavits are the same as the statutory filing periods for the renewal applications. The Office will create a combined ''Section 8 and 9'' form to make it easy to make both filings in a single document. In substance, the requirements of the combined filing under amended §§ 8 and 9 will be the same as the requirements for renewal under current law.

A § 8 affidavit between the fifth and sixth year after the date of registration is also required. This is consistent with current law. No renewal application will be required during the sixth year.

TLTIA §§ 105 and 106 amend §§ 8 and 9 of the Act to permit filing within a six-month grace period after the end of the statutory filing period, with an additional surcharge.

TLTIA §§ 105 and 106 also amend §§ 8 and 9 to allow for the correction of deficient filings after the statutory filing period expires, with payment of an additional surcharge. The amended Act does not define deficiency or place any limits on the type of deficiency or omission that can be cured after expiration of the statutory filing period. The Commissioner has broad discretion to establish procedures and fees for curing deficiencies or omissions.

*Fee Changes*

The Office proposes to decrease the renewal fee from $300 to $200 per class.

As a result of increased administrative costs, the Office proposes to increase the filing fees for § 8 affidavits and for § 15 affidavits from $100 to $200 per class.

The proposed surcharge for filing a § 8 affidavit or § 9 renewal application during the grace period is $100 per class. This is consistent with the current renewal grace period fee.

The proposed surcharge for correcting a deficiency in a § 8 affidavit or a § 9 renewal application is $100. Sections 8(c)(2) and 9(a) of the Act require a surcharge for correcting deficiencies.

**Recording Assignments and Changes of Name**

Currently, the Office will record only an original document or a true copy of an original. TLTIA § 107 amends § 10 of the Act to allow recordation of a document that is not an original or a true copy.

**Assignment of § 1(b) Applications**

TLTIA § 107 amends § 10 to permit an assignment after the applicant files an amendment to allege use under § 1(c) of the Act. Currently, a § 1(b) application cannot be assigned until after the filing of a statement of use under § 1(d) of the Act, except to a successor to the applicant's business, or the portion of the business to which the mark pertains. This amendment corrects an oversight in the Trademark Law Revision Act of 1988 (Title 1 of Pub. Law No. 100–667, 102 Stat. 3935 (15 U.S.C. 1051)), which amended § 10 of the Act to permit an assignment of a § 1(b) application to someone other than a successor to the applicant's business only after the filing of a statement of use under § 1(d) of the Act. The substance of statements of use and amendments to allege use are the same, and the only difference is the time of filing, so there is no reason to treat them differently.

**Discussion of Specific Rules Changed or Added**

The Office proposes to amend rules 1.1, 1.4, 1.5, 1.6, 1.23, 2.1, 2.6, 2.17,

2.20, 2.21, 2.31, 2.32, 2.33, 2.34, 2.35, 2.37, 2.38, 2.39, 2.45, 2.51, 2.52, 2.56, 2.57, 2.58, 2.59, 2.66, 2.71, 2.72, 2.76, 2.86, 2.88, 2.89, 2.101, 2.111, 2.146, 2.151, 2.155, 2.156, 2.160, 2.161, 2.162, 2.163, 2.164, 2.165, 2.166, 2.167, 2.168, 2.173, 2.181, 2.182, 2.183, 2.184, 2.185, 2.186, 3.16, 3.24, 3.25, 3.28, 3.31, and 6.1.

The Office proposes to revise § 1.1(a)(2) to set forth all the addresses for filing trademark correspondence in one rule.

The Office proposes in § 1.1(a)(2)(i) to exempt papers filed electronically from the requirement that correspondence be mailed to the street address of the Office.

The Office proposes to state in § 1.1(a)(2)(v) that an applicant may transmit an application for trademark registration electronically, but only if the applicant uses the Office's electronic form.

The Office proposes to amend § 1.4(a)(2) to correct a cross-reference.

The Office proposes to add a new § 1.4(d)(1)(iii) to provide for signature of electronically transmitted trademark filings, where permitted.

The Office proposes to amend § 1.5(c) to clarify the requirements for identifying trademark applications and registrations.

The Office proposes to amend § 1.6(a) to provide that the Office will consider trademark-related correspondence transmitted electronically to have been filed on the date of transmission, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. This is consistent with the treatment of correspondence filed as Express Mail with the United States Postal Service under § 1.10.

The Office proposes to amend § 1.23 to allow payments for electronic applications and other electronic submissions authorized by the Office by a credit card identified on the electronic form.

The Office proposes to revise § 2.1 to update a cross-reference.

The Office proposes to amend § 2.6(a)(5) to decrease the filing fee for a renewal application from $300 to $200 per class.

The Office proposes to amend § 2.6(a)(6) to delete reference to the three-month renewal grace period. TLTIA changes the grace period to six months.

The Office proposes to amend § 2.6(a)(12) to increase the fee for filing a § 8 affidavit from $100 to $200 per class, due to increased administrative costs.

The Office proposes to revise § 2.6(a)(13) to increase the fee for filing a § 15 affidavit from $100 to $200 per class, due to increased administrative costs.

The Office proposes to remove § 2.6(a)(14) because it is unnecessary. The cost of a combined affidavit or declaration under §§ 8 and 15 of the Act is the sum of the cost of the individual filings.

The Office proposes to add new § 2.6(a)(14) requiring a $100 surcharge per class for filing a § 8 affidavit during the grace period.

The Office proposes to amend § 2.6(a)(19) to increase the fee for filing a request to divide an application from $100 to $300 per new application created. The Office believes that a $300 fee reflects the extensive amount of work required to process a request to divide.

The Office proposes to add new § 2.6(a)(20), requiring a $100 surcharge for correcting a deficiency in a § 8 affidavit. Amended § 8(c)(2) of the Act requires a deficiency surcharge.

The Office proposes to add new § 2.6(a)(21), requiring a $100 surcharge for correcting a deficiency in a renewal application. Section 9(a) of the Act, as amended, requires a deficiency surcharge.

The Office proposes to add new § 2.17(c), stating that to be recognized as a representative in a trademark case, an attorney as defined in § 10.1(c) may file a power of attorney, appear in person, or sign a paper on behalf of an applicant or registrant that is filed with the Office. This codifies current practice.

The Office proposes to add new § 2.17(d), stating that someone may file a power of attorney that relates to more than one trademark application or registration, or to all existing and future applications and registrations; and that someone relying on a power of attorney concerning numerous applications or registrations must: (1) include a copy of the previously filed power of attorney; or (2) refer to the previously filed power of attorney, specifying: the filing date; the application serial number, registration number, or *inter partes* proceeding number for which the original power of attorney was filed; and the name of the party who signed the power of attorney; or, if the application serial number is not known, submit a copy of the application or a copy of the mark, and specify the filing date.

The Office proposes to revise § 2.20 to delete the requirement for a declaration by a ''member of the firm or an officer of the corporation or association,'' because this requirement has been deleted from §§ 1(a) and 1(b) of the Act.

The Office proposes to revise § 2.21, listing the minimum requirements for receipt of an application filing date. The proposed minimum filing requirements are: (1) the name of the applicant; (2) a name and address for correspondence; (3) a clear drawing of the mark; (4) an identification of goods or services; and (5) the filing fee for at least one class of goods or services.

The Office proposes to delete the following minimum requirements for receiving a filing date: a stated basis for filing; a verification or declaration signed by the applicant; an allegation of use in commerce, specimen, and date of first use in commerce in an application under § 1(a) of the Act; an allegation of the applicant's bona fide intention to use the mark in commerce in an application under § 1(b) or § 44 of the Act; a claim of priority in an application under § 44(d) of the Act; and a certified copy of a foreign registration in an application under § 44(e) of the Act. A claim of priority under § 44(d) must be filed before the end of the priority period. All other elements must be provided before the mark is published for opposition or approved for registration on the Supplemental Register.

The Office proposes to require in § 2.21(a)(3) a ''clear drawing of the mark'' rather than the drawing ''substantially meeting all the requirements of § 2.52'' that is now required.

The Office proposes to state in § 2.21(b) that the Office ''may'' rather than ''will'' return the papers and fees to the applicant when an application does not meet the minimum filing requirements. A new procedure is being considered under which the Office would retain applications that do not meet the minimum filing requirements. Applicants would have an opportunity to supply the missing element and receive a filing date as of the date the Office receives the missing element. Until a new policy is announced, the Office will continue to return the papers and fees to the applicant.

The Office proposes to delete the center heading ''THE WRITTEN APPLICATION'' before § 2.31 because it is unnecessary. The heading ''APPLICATION FOR REGISTRATION,'' immediately before § 2.21, encompasses the rules that now fall under the heading ''THE WRITTEN APPLICATION.''

The Office proposes to remove and reserve § 2.31, and to move the substance of the requirement that the application be in English to § 2.32(a).

The Office proposes to change the heading of § 2.32 to ''Requirements for

written application,'' and to revise the rule. Proposed § 2.32(a) lists the requirements for the written application, now listed in § 2.33(a)(1).

Proposed § 2.32 does not require a statement of the applicant's method or intended method of use of the mark, because §§ 1(a) and 1(b) of the Act, as amended, no longer require that applicants state the mode or manner in which a mark is used.

The Office proposes to change the heading of § 2.33 to ''Verified statement'' and revise the rule.

The Office proposes to revise § 2.33(a) to state that the application must include a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant. The proposed rule further states that a person who is properly authorized to sign on behalf of the applicant includes a person with legal authority to bind the applicant and/or a person with firsthand knowledge and actual or implied authority to act on behalf of the applicant.

The Office proposes to move the substance of § 2.32(b) to § 2.33(c), and revise it to state that the Office may require a substitute verification of the applicant's continued use or bona fide intention to use the mark when the applicant does not file the verified statement within a reasonable time after the date it is signed. This codifies present practice. Section 2.32(b) now states only that a verification of the applicant's continued use of the mark is required where the application is not filed within a reasonable time after it is signed. However, the Office also requires verification of the applicant's continued *bona fide intention to use* the mark in commerce when a verification under § 1(b) or § 44 of the Act is not filed within a reasonable time after it is signed. TMEP § 803.04.

The Office proposes to add § 2.33(d), stating that where an electronically transmitted filing is permitted, the person who signs the verified statement must either: (1) place a symbol comprised of numbers and/or letters between two forward slash marks in the signature block on the electronic document; and print, sign and date in permanent ink, and maintain a paper copy of the electronic submission; or (2) use some other form of electronic signature that the Commissioner may designate.

Proposed § 2.33(d)(1) states that applicants who submit electronic documents must sign and date in permanent ink, and maintain a verified statement confirming that the signatory has adopted the symbol shown in the signature block to verify the contents of the document, and that the information in the electronic submission is identical to the information in the paper copy of the submission.

The Office proposes to add new § 2.34, ''Bases for filing.'' Currently, an applicant must establish a basis for filing to receive a filing date. Under the proposed new rules, a stated filing basis will no longer be included as one of the minimum requirements for receipt of a filing date. If missing, it must be provided before the mark is published for opposition or approved for registration on the Supplemental Register.

The Office proposes that the requirements for each of the four bases be moved from § 2.21(a)(5) to § 2.34(a). Section 2.34(a)(1) will list the requirements for an application under § 1(a) of the Act, now listed in §§ 2.21(a)(5)(i), 2.33(a)(1)(iv), 2.33(a)(1)(vii), 2.33(a)(2), and § 2.33(b)(1). Section 2.34(a)(2) will list the requirements for an application under § 1(b) of the Act, now listed in §§ 2.21(a)(5)(iv) and 2.33(a)(1)(iv).

Section 2.34(a)(3) will list the requirements for an application under § 44(e) of the Act, now listed in §§ 2.21(a)(5)(ii) and 2.33(a)(1)(viii). Section 2.34(a)(3)(ii) will require a certified copy of a foreign registration. Currently, a § 44(e) applicant must submit a foreign certificate to receive a filing date. However, TLTIA § 108 amends § 44(e) of the Act to delete the requirement that the application be ''accompanied by'' the foreign certificate. The Office proposes to require that the applicant submit the certificate before the mark is published for opposition or approved for registration on the Supplemental Register.

The Office proposes to add § 2.34(a)(3)(iii), stating that if it appears that the foreign registration will expire before the mark in the United States application will register, the applicant must submit a certification from the foreign country's trademark office, showing that the registration has been renewed and will be in force at the time the United States registration will issue. This codifies current practice. TMEP § 1004.03.

The Office proposes that § 2.34(a)(4) will list the requirements for an application under § 44(d) of the Act, now listed in §§ 2.21(a)(5)(iii), 2.33(a)(1)(ix), and 2.39. Proposed § 2.34(a)(4)(i) requires that a priority claim be filed within six months of the filing date of the foreign application. This is consistent with Articles 4(C)(1) and 4(D)(1) of the Paris Convention for the Protection of Industrial Property, as revised at Stockholm on July 14, 1967 (Paris Convention).

The Office proposes to state in § 2.34(b)(1) that an applicant may claim more than one basis, provided that the applicant meets the requirements for all bases claimed. This codifies current practice. The Office also proposes to state that the applicant may not claim both §§ 1(a) and 1(b) for the identical goods or services in one application.

In § 2.34(b)(2), the Office proposes to require that the applicant specify which basis covers which goods or services when an applicant claims more than one basis.

In § 2.34(c), the Office proposes to set forth the definition of ''commerce'' currently found in § 2.33(a)(3).

The Office proposes to remove § 2.37.

The Office proposes to redesignate § 2.35 as § 2.37.

The Office proposes to add new § 2.35, ''Adding, deleting, or substituting bases.''

The Office proposes to state in § 2.35(a) that the applicant may add or substitute a basis for registration before publication, and that the applicant may delete a basis at any time.

The Office proposes to state in § 2.35(b) that the applicant cannot amend an application to add or substitute a basis after publication. This changes practice. Prior to 1995, the Office did not accept amendments adding or substituting a basis for registration after publication. This policy was changed by *In re Monte Dei Maschi Di Siena*, 34 USPQ2d 1415 (Comm'r Pats. 1995). Currently, the Office will accept an amendment to add or substitute a basis for registration after publication if the applicant files a petition to the Commissioner; republication is required. TMEP § 1006.04.

After three years of experience, the Office does not believe that accepting these amendments is in the public interest, because the amendments reopen examination. This delays later-filed conflicting applications, which must be suspended indefinitely until the earlier-filed application is either registered or abandoned. Therefore, the Office proposes to prohibit amendments that add or substitute a basis after publication.

The Office proposes to state in § 2.35(c) that when the applicant substitutes a basis, the Office will presume that the original basis was valid, unless there is contradictory evidence in the record, and the application will retain the original filing date.

Under present practice, if the applicant changes the basis from § 1(a) or § 1(b) to § 44(e), or from § 44(e) to either § 1(a) or § 1(b), the applicant retains the original filing date. However, if an application is filed solely under § 44(d), and the applicant amends to substitute a different basis after the expiration of the six-month priority period, the effective filing date of the application becomes the date the applicant perfects the amendment claiming the new basis. TMEP § 1006.03.

The Office proposes to change this practice, to allow a § 44(d) applicant to retain the priority filing date when the applicant substitutes a new basis after the expiration of the six-month priority period.

The Office proposes to state in § 2.35(d) that if an applicant properly claims a § 44(d) basis in addition to another basis, the applicant will retain the priority filing date under § 44(d) no matter which basis the applicant perfects. This codifies current practice. TMEP § 1006.01.

The Office proposes to state in § 2.35(e) that the applicant may add or substitute a § 44(d) basis only within the six-month priority period following the filing date of the foreign application. This is consistent with current practice (TMEP § 1006.05), and with Articles 4(C)(1) and 4(D)(1) of the Paris Convention.

In § 2.35(f), the Office proposes to state that an applicant who adds a basis must state which basis covers which goods or services.

The Office proposes to state in § 2.35(g) that if an applicant deletes a basis, the applicant must also delete any goods or services covered solely by the deleted basis. This codifies current practice.

The Office proposes to state in § 2.35(h) that once an applicant claims a § 1(b) basis as to any or all of the goods or services, the applicant may not amend the application to seek registration under § 1(a) of the Act for those goods or services unless the applicant files an allegation of use under § 1(c) or § 1(d) of the Act.

The Office proposes to amend § 2.38(a) to update a cross-reference.

The Office proposes to remove and reserve § 2.39, and to move the requirements for filing a priority claim under § 44(d) of the Act to § 2.34(a)(4), discussed above.

The Office proposes to revise §§ 2.45(a) and (b) to: (1) delete the requirement for a statement of the method or intended method of use in a certification mark application; and (2) require a copy of the standards that determine whether others may use the certification mark on their goods and/or in connection with their services. Sections 1(a) and 1(b) of the Act, as amended, no longer require a statement of the method or intended method of use of a mark. The requirement for a copy of the certification standards codifies current practice. TMEP § 1306.06(g)(ii).

The Office proposes to remove §§ 2.51(c) through (e), and move the substance of those rules to § 2.52.

The Office proposes to revise § 2.52(a) to define the term ''drawing,'' to indicate that a drawing may only depict a single mark, and to define the terms ''typed drawing'' and ''special form drawing.''

The Office proposes to add guidelines in § 2.52(a) for drawings of various types of unusual marks, such as marks that include color, three-dimensional objects, motion, sound or scent; and to add guidelines for showing placement of the mark on goods, packaging for goods, or in advertising of services.

The Office proposes to indicate the recommended format for the drawing of a mark in § 2.52(b).

The Office proposes to revise § 2.52(c) to state that for an electronically filed application, if the mark cannot be shown as a ''typed drawing,'' the applicant must attach a digitized image of the mark to the application.

The Office proposes to consolidate §§ 2.56, 2.57 and 2.58 into § 2.56, and to remove and reserve §§ 2.57 and 2.58.

The Office proposes to revise § 2.56(a) to require one rather than three specimens with an application under § 1(a) of the Act, or an allegation of use under § 1(c) or § 1(d) of the Act in an application under § 1(b) of the Act. See the discussion above under ''Supplementary Information/Number of Specimens Required.''

The Office proposes to add § 2.56(b)(1), stating that a trademark specimen is a label, tag, or container for the goods, or a display associated with the goods; and that the Office may accept another document related to the goods or the sale of the goods when it is not possible to place the mark on the goods or packaging for the goods. This is consistent with the current § 2.56.

The Office proposes to add § 2.56(b)(2), stating that a service mark specimen must show the mark as actually used in the sale or advertising of the services. This is consistent with the current § 2.58(a).

The Office proposes to add § 2.56(b)(3), stating that a collective trademark or collective service mark specimen must show how a member uses the mark on the member's goods or in the sale or advertising of the member's services. This codifies current practice. TMEP § 1303.02(b).

The Office proposes to add § 2.56(b)(4), stating that a collective membership mark specimen must show use by members to indicate membership in the collective organization. This codifies current practice. TMEP § 1304.09(c).

The Office proposes to add § 2.56(b)(5), stating that a certification mark specimen must show how a person other than the owner uses the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of the person's goods or services; or that members of a union or other organization performed the work or labor on the goods or services. This codifies current practice. TMEP § 1306.06(c).

The Office proposes to add § 2.56(c), stating that a photocopy or other reproduction of a specimen is acceptable, but that a photocopy or facsimile that merely reproduces the drawing is not a proper specimen. This is consistent with the current § 2.57.

Proposed new § 2.56(d)(1) states that a specimen must be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. This is consistent with the current § 2.56.

The Office proposes to add § 2.56(d)(2), stating that if the applicant files a specimen that is too large (a ''bulky specimen''), the Office will create a facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper. See the discussion above under ''Supplementary Information/Bulky Specimens.''

The Office proposes to add § 2.56(d)(4), stating that if the application is filed electronically, the specimen must be submitted as a digitized image.

The Office proposes to revise § 2.59 to clarify and simplify the language.

The Office proposes to rewrite § 2.66 to set forth the requirements for filing a petition to revive an abandoned application when the delay in responding to an Office action or notice of allowance is ''unintentional.'' Currently, an applicant can revive an abandoned application only if the delay was ''unavoidable,'' a much stricter standard. TLTIA §§ 103 and 104 amend §§ 1(d)(4) and 12(b) of the Act to permit an application to be revived if the delay is ''unintentional.'' The ''unavoidable delay'' standard has been removed from the statute, effective October 30, 1999.

The Office proposes to add §§ 2.66(a)(1) and (2), requiring that the applicant file a petition to revive within (1) two months of the mailing date of the notice of abandonment; or (2) two months of actual knowledge of abandonment. Currently, the deadline for filing a petition to revive is sixty days. TMEP § 1112.05(a). The two-month deadline will make it easier to calculate the due date for a petition because it will not be necessary to count days.

The Office also proposes to state in § 2.66(a)(2) that an applicant must be diligent in checking the status of an application. This codifies current practice. TMEP §§ 413 and 1112.05(b)(ii). The Office now denies petitions to revive when the applicant waits too long before checking the status of an application. To be diligent, the applicant must check the status of the application within one year of the last filing or receipt of a notice from the Office. Applicants can check the status of applications through the Trademark Status Line, or through the Office's World Wide Web site at *www.uspto.gov*. This is consistent with proposed § 2.146(i), discussed below.

The Office proposes to amend §§ 2.66(b)(2) and (c)(2) to require ''a statement, signed by someone with firsthand knowledge of the facts, that the delay * * * was unintentional,'' rather than the ''showing of the causes of the delay'' that these rules now require.

The Office proposes to delete the requirement that a petition to revive include a statement that is verified or supported by a declaration under § 2.20. This is unnecessary because § 10.18(b), as amended effective December 1, 1997, states that any party who presents a paper to the Office is certifying that all statements are true and attesting to an awareness of the penalty for perjury. This proposed amendment is consistent with amendments to §§ 1.8(b)(3), 1.10(d), 1.10(e), 1.137(a)(3), and 1.137(b)(3), also effective December 1, 1997. 62 FR 53186 (Oct. 10, 1997).

The Office proposes to amend § 2.66(b)(3) to state that if the applicant did not receive the Office action, the applicant need not include a proposed response to an Office action with a petition to revive. This codifies current practice.

The Office proposes to amend §§ 2.66(c)(3) and (4) to state that if the applicant did not receive the notice of allowance, the petition to revive need not include a statement of use or request for an extension of time to file a statement of use, or the fees for the extension requests that would have been due if the application had never been abandoned. This codifies current practice.

The Office proposes to add § 2.66(c)(5), stating that unless a statement of use is filed with or before the petition to revive, or the petition states that the applicant did not receive the notice of allowance, the applicant must file any further requests for extensions of time to file a statement of use under § 2.89 that become due while the petition is pending, or file a statement of use. This codifies current practice.

The Office proposes to add § 2.66(f)(3), stating that if the Commissioner denies the petition to revive, the applicant may request reconsideration by: (1) filing the request within two months of the mailing date of the decision denying the petition; and (2) paying a second petition fee under § 2.6. Currently, the rules do not specifically provide for requests for reconsideration of petition decisions, but the Commissioner has the discretion to consider these requests under § 2.146(a)(3). The Office believes that an additional fee should be required to pay for the work done in processing the request for reconsideration. This is consistent with proposed § 2.146(j).

The Office proposes to revise § 2.71(a) to state that the applicant may amend the identification to clarify or limit, but not broaden, the identification of goods and/or services. This simplifies the language of the current § 2.71(b).

Proposed § 2.71(b)(1) states that if the declaration or verification of an application under § 2.33 is unsigned or signed by the wrong party, the applicant may submit a substitute verification or declaration under § 2.20. This changes current practice. Currently, the applicant must submit a signed verification to receive an application filing date, and if the verification is signed by the wrong party, the applicant cannot file a substitute verification unless the party who originally signed had ''color of authority'' (i.e., firsthand knowledge of the facts and actual or implied authority to act on behalf of the applicant). TMEP § 803. As discussed above, the Office proposes to delete the requirement that the applicant submit a signed verification in order to receive a filing date. If the verification is unsigned or signed by the wrong party, the applicant must replace the declaration before the mark is published for opposition or approved for registration on the Supplemental Register.

The Office proposes to delete the requirement for a verification ''by the applicant, a member of the applicant firm, or an officer of the applicant corporation or association'' from § 2.71(c). This is consistent with the amendments to §§ 1(a) and 1(b) of the Act.

The Office also proposes to delete the ''color of authority'' provisions from § 2.71(c). Because the statute no longer specifies who has ''statutory'' authority to sign, the ''color of authority'' provisions are unnecessary.

The Office proposes to state in § 2.71(b)(2) that if the declaration or verification of a statement of use under § 2.88 or a request for extension of time to file a statement of use under § 2.89 is unsigned or signed by the wrong party, the applicant must submit a substitute verification before the expiration of the statutory deadline for filing the statement of use. This is consistent with current practice and with the proposed amendments to §§ 2.88(e)(3), 2.89(a)(3), and 2.89(b)(3), discussed below.

The Office proposes to add new § 2.71(d), stating that a mistake in setting out the applicant's name can be corrected, but the application cannot be amended to set forth a different entity as the applicant; and that an application filed in the name of an entity that did not own the mark on the filing date of the application is void. This codifies current practice. TMEP § 802.07. See the discussion above under ''Supplementary Information/Filing by Owner.''

The Office proposes to revise § 2.72 to remove paragraph (a), and redesignate paragraphs (b) through (d) as (a) through (c).

The Office proposes that new paragraphs (a) through (c) will each state that an applicant may not amend the description or drawing of the mark if the amendment materially alters the mark; and that the Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark in the original application. These provisions are now stated in paragraph (a).

Under the current § 2.72, as interpreted by *In re ECCS, Inc.*, 94 F.3d 1578, 39 USPQ2d 2001 (Fed. Cir. 1996) and *In re Dekra e.V.*, 44 USPQ2d 1693 (TTAB 1997), an applicant may amend an application to correct an ''internal inconsistency.'' An application is ''internally inconsistent'' if the mark on the drawing does not agree with the mark on the specimens in an application based on use, or with the mark on the foreign registration in an application based on § 44 of the Act.

Currently, because §§ 2.72(b), (c) and (d) do not expressly prohibit an

amendment that materially alters the mark on the original drawing, the Office accepts amendments that correct ''internal inconsistencies,'' regardless of whether the amendment materially alters the mark on the original drawing. TMEP § 807.14(a).

The Office does not believe that it is in the public interest to accept amendments that materially alter the mark on the original drawing. When the Office receives a new application, the mark on the drawing is promptly filed in the Trademark Search Library and entered into the Office's electronic and administrative systems. Accepting an amendment that materially alters the mark on the original drawing is unfair to third parties who search Office records between the application filing date and the date the amendment is entered, because they do not have accurate information about earlier-filed applications. A third party may innocently begin using a mark that conflicts with the amended mark, but not with the original mark, relying on the search of Office records. Also, an examining attorney may approve a later-filed application for registration of a mark that conflicts with the amended mark, but not with the original mark. Therefore, the Office proposes to amend § 2.72 to prohibit amendments that materially alter the mark on the original drawing.

The Office proposes to revise § 2.76(b)(1) to state that a complete amendment to allege use must include a statement that is verified or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant.

The Office proposes to further revise § 2.76(b)(1) to delete the requirement for a statement of the method or manner of use of the mark in an amendment to allege use, because this requirement has been removed from §§ 1(a) and 1(b) of the Act.

The Office proposes to revise § 2.76(b)(2) to require one rather than three specimens with an amendment to allege use. See the above discussion under ''Supplementary Information/ Number of Specimens Required.''

The Office proposes to add new § 2.76(i), stating that if an amendment to allege use is not filed within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 that the mark is still in use in commerce. This codifies current practice. TMEP § 803.04.

The Office proposes to add new § 2.76(j), noting that the requirements for multi-class applications are stated in § 2.86.

The Office proposes to change the heading of § 2.86 to ''Application may include multiple classes.'' The Office proposes to remove current § 2.86(a), which states that an applicant may recite more than one item of goods, or more than one service, in a single class, if the applicant either has used or has a bona fide intention to use the mark on all the goods or services. The substance of this provision will be moved to §§ 2.34(a)(1)(v), 2.34(a)(2)(ii), 2.34(a)(3)(iv) and 2.34(a)(4)(iv).

The Office proposes to revise § 2.86(a) to include sections now found in § 2.86(b), stating that the applicant may apply to register the same mark for goods and/or services in multiple classes in a single application, provided that the applicant specifically identifies the goods and services in each class; submits a fee for each class; and either includes dates of use and one specimen, or a statement of a bona fide intention to use the mark in commerce, for each class. The Office also proposes to add in § 2.86(a)(3) a provision that the applicant may not claim both use in commerce and a bona fide intention to use the mark in commerce for the identical goods or services in one application.

The Office proposes to state in § 2.86(b) that a statement of use or amendment to allege use must include the required fee, dates of use, and one specimen for each class. The requirement for only one specimen is consistent with the proposed amendments to §§ 2.56(a), 2.76(b)(2), and 2.88(b)(2).

The Office also proposes to add to § 2.86(b) a provision that the applicant may not file the statement of use or amendment to allege use until the applicant has used the mark on all the goods or services, unless the applicant files a request to divide. This is consistent with the current §§ 2.76(c) and 2.88(c).

The Office proposes to delete the current § 2.86(c), which prohibits an applicant from claiming both use in commerce and intent-to-use in a single multi-class application. However, the Office proposes to state in § 2.86(a)(3) that the applicant may not claim both use in commerce and intent-to-use for the identical goods or services in one application.

The Office proposes to move the substance of the last sentence of the current § 2.86(b) to new § 2.86(c).

The Office proposes to revise § 2.88(b)(1) to state that a complete statement of use must include a statement that is verified or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant.

The Office proposes to revise § 2.88(b)(1) to delete the requirement for a statement of the method or manner of use in a statement of use. This requirement has been removed from § 1(d)(1) of the Act.

The Office proposes to revise § 2.88(b)(2) to require one specimen with a statement of use, rather than the three specimens now required. This is consistent with the proposed amendment of § 2.56(a).

The Office proposes to revise § 2.88(e)(3) to state that if the verification or declaration is unsigned or signed by the wrong party, the applicant must submit a substitute verification or declaration on or before the statutory deadline for filing the statement of use. This is consistent with current practice. TMEP § 1105.05(f)(i)(A). Section 1(d)(1) of the Act specifically requires verification by the applicant within the statutory period for filing the statement of use.

The Office proposes to add § 2.88(k), stating that if the statement of use is not filed within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the mark is still in use in commerce. This codifies current practice. TMEP § 803.04.

The Office proposes to add § 2.88(l), noting that the requirements for multi-class applications are stated in § 2.86.

The Office proposes to revise §§ 2.89(a)(3) and (b)(3) to require that a request for an extension of time to file a statement of use include a statement that is verified or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant; and that if the extension request is unsigned or signed by the wrong party, the applicant must submit a substitute verification or declaration on or before the statutory deadline for filing the statement of use. This is consistent with current practice. TMEP § 1105.05(d). Sections 1(d) (1) and (2) of the Act specifically require verification by the applicant within the statutory filing period.

The Office proposes to revise § 2.89(d) to remove paragraph (1), which requires a statement that the applicant has not yet made use of the mark in commerce on all the goods and services. The Commissioner has held that an extension request that omits this allegation is substantially in compliance with § 2.89(d) if the request contains a statement that the applicant has a continued bona fide intention to use the mark in commerce. *In re Schering-Plough Healthcare Products Inc.,* 24

USPQ2d 1709 (Comm'r Pats. 1992). Therefore, the requirement is unnecessary.

The Office proposes to add § 2.89(h), stating that if the extension request is not filed within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 that the applicant still has a bona fide intention to use the mark in commerce. This codifies current practice. TMEP § 803.04.

The Office proposes to revise § 2.101(d)(1) to update a cross-reference.

The Office proposes to revise § 2.111(c)(1) to update a cross-reference.

The Office proposes to revise § 2.146(d) to delete ''sixty days'' and substitute ''two months'' as the deadline for filing certain petitions. This will make it easier to calculate the due date for a petition because it will not be necessary to count days.

The Office proposes to add § 2.146(i), stating that where a petitioner seeks to reactivate an application or registration that was abandoned or cancelled due to the loss or mishandling of papers mailed to or from the Office, the petition will be denied if the petitioner was not diligent in checking the status of the application or registration. This codifies current practice. TMEP §§ 413 and 1704. Even where a petitioner can show that the Office actually received papers, or can swear that a notice from the Office was never received by the petitioner, the Office now denies the petition if the petitioner waited too long before investigating the problem. This is because third parties may rely to their detriment on the information in the records of the Office that an application is abandoned or that a registration is expired. A third party may have diligently searched Office records and begun using a mark because the search showed no earlier-filed conflicting marks, or an examining attorney may have searched Office records and approved an earlier-filed application for a conflicting mark. This is consistent with the proposed amendment of § 2.66(a)(2), discussed above.

The Office proposes to add § 2.146(j), stating that if the Commissioner denies the petition, the petitioner may request reconsideration by: (1) filing the request within two months of the mailing date of the decision denying the petition; and (2) paying a second petition fee under § 2.6. Currently, the rules do not specifically provide for requests for reconsideration of petition decisions, but the Commissioner has the discretion to consider these requests under § 2.146(a)(3). The Office believes that an additional fee should be required to pay for the work done in processing the request for reconsideration. This is consistent with proposed § 2.66(f)(3), discussed above.

The Office proposes to revise § 2.151 to update a cross-reference and simplify the language.

The Office proposes to revise § 2.155 to update a cross-reference and simplify the language.

The Office proposes to revise § 2.156 to update a cross-reference and simplify the language.

The Office proposes to add § 2.160, ''Affidavit or declaration of continued use or excusable nonuse required to avoid cancellation.'' Proposed §§ 2.160(a) (1) and (2) list the deadlines for filing the affidavit or declaration, and proposed § 2.160(a)(3) states that the owner may file the affidavit or declaration within six months after expiration of these deadlines, with an additional grace period surcharge. Currently, there is no grace period for filing a § 8 affidavit.

Proposed § 2.160(b) advises that § 2.161 lists the requirements for the affidavit or declaration.

The Office proposes to change the heading of § 2.161 to ''Requirements for a complete affidavit or declaration of continued use or excusable nonuse,'' and to revise § 2.161 to list the proposed requirements for the affidavit or declaration.

The Office proposes to revise § 2.161(a) to state that the owner must file the affidavit or declaration within the period set forth in § 8 of the Act.

The Office proposes to revise § 2.161(b) to state that the affidavit or declaration must include a verified statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the owner, attesting to the continued use or excusable nonuse of the mark within the period set forth in § 8 of the Act. The Office also proposes to revise § 2.161(b)(2) to state that a person properly authorized to sign on behalf of the owner includes a person with legal authority to bind the owner and/or a person with firsthand knowledge and actual or implied authority to act on behalf of the owner.

The Office proposes to add § 2.161(d)(2), requiring a surcharge for filing an affidavit or declaration of continued use or excusable nonuse during the grace period.

The Office proposes to add § 2.161(d)(3), stating that if the fee submitted is enough to pay for at least one class, but not enough to pay for all the classes, and the particular class(es) covered by the affidavit or declaration are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied; that additional fee(s) may be submitted if the requirements of § 2.164 are met; and that if additional fees are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class.

Proposed § 2.161(e) requires that the affidavit or declaration list both the goods or services on which the mark is in use in commerce and the goods or services for which excusable nonuse is claimed. Currently, a list of the goods or services is not required when excusable nonuse is claimed. *In re Conusa Corp.*, 32 USPQ2d 1857 (Comm'r Pats. 1993). However, TLTIA § 105 amends § 8(b)(2) of the Act to specifically require ''an affidavit setting forth those goods on or in connection with which the mark is not in use.''

The Office proposes to eliminate the requirement that the affidavit or declaration specify the type of commerce in which the mark is used, currently required by § 2.162(e). Section 8 of the Act does not require that the affidavit or declaration list the type of commerce. Because the definition of ''commerce'' in § 45 of the Act is ''all commerce which may lawfully be regulated by Congress,'' the Office will presume that a registrant who states that the mark is in use in commerce is stating that the mark is in use in a type of commerce that Congress can regulate.

The Office proposes to move the substance of § 2.162(f) to § 2.161(f)(2), and to revise it to add a requirement that the affidavit state the date when use of the mark stopped and the approximate date when use will resume. This codifies current practice. Office actions are often issued requiring a statement as to when use of the mark stopped and when use will resume, because this information is needed to determine whether the nonuse is excusable, within the meaning of § 8 of the Act.

The Office proposes to move the substance of § 2.162(e) to § 2.161(g), and to revise it to state that the affidavit must include a specimen for each class of goods or services; that the specimen should be no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long; and that if the applicant files a specimen that exceeds these size requirements (a ''bulky specimen''), the Office will create a facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69

inches (29.7 cm.) long) and put it in the file wrapper. See the discussion above under ''Supplementary Information/ Bulky Specimens.''

The Office proposes to add § 2.161(h), requiring a designation of a domestic representative if the registrant is not domiciled in the United States. This reflects § 8(f) of the Act, as amended, and is consistent with current practice.

The Office proposes to move the substance of § 2.163 to § 2.162, and to revise it to say that the only notice of the requirement for filing the § 8 affidavit or declaration of continued use or excusable nonuse is sent with the certificate of registration when it is originally issued. This merely clarifies, and does not change, current practice.

The Office proposes to move the substance of current § 2.164 to the introductory text of new § 2.163.

The Office proposes to state in § 2.163(a) that if the owner of the registration files the affidavit or declaration within the time periods set forth in § 8 of the Act, deficiencies may be corrected if the requirements of § 2.164 are met.

The Office proposes to add § 2.163(b), stating that a response to an examiner's Office action must be filed within six months of the mailing date, or before the end of the filing period set forth in § 8(a) or § 8(b) of the Act, whichever is later, or the registration will be cancelled.

The Office proposes to add § 2.164, ''Correcting deficiencies in affidavit or declaration.'' This section changes current practice. There are now some deficiencies that can be corrected after the statutory deadline for filing the affidavit or declaration, such as supplying evidence that the party who filed the affidavit or declaration was the owner of the mark as of the filing date, or submitting an additional fee. Other requirements must be satisfied before the expiration of the statutory deadline to avoid cancellation of the registration. *In re Mother Tucker's Food Experience (Canada) Inc.,* 925 F.2d 1402, 17 USPQ2d 1795 (Fed. Cir. 1991) (allegation of use in commerce); *In re Metrotech,* 33 USPQ2d 1049 (Comm'r Pats. 1993) (specimen); *In re Bonbons Barnier S.A.,* 17 USPQ2d 1488 (Comm'r Pats. 1990) (listing of goods or services).

TLTIA § 105 adds § 8(c)(2) of the Act to allow correction of deficiencies, with payment of a deficiency surcharge. The Act does not define ''deficiency,'' but instead gives the Office broad discretion to set procedures and fees for correcting deficiencies.

Proposed § 2.164(a)(1) states that if the owner files the affidavit or declaration within the period set forth in § 8(a) or § 8(b) of the Act, deficiencies can be corrected before the end of this period without paying a deficiency surcharge; and deficiencies can be corrected after the expiration of this period with payment of the deficiency surcharge.

The Office proposes to state in § 2.164(a)(2) that if the owner files the affidavit or declaration during the grace period, deficiencies can be corrected before the expiration of the grace period without paying a deficiency surcharge, and after the expiration of the grace period with a deficiency surcharge.

The Office proposes to state in § 2.164(b) that if the affidavit or declaration is not filed within the time periods set forth in § 8 of the Act, or if it is filed within that period by someone other than the owner, the registration will be cancelled. These deficiencies cannot be cured.

Because § 8(c)(2) of the Act specifically requires a deficiency surcharge, the Office proposes to require the deficiency surcharge for correcting any type of deficiency, even one that could be corrected for no fee under current law.

The Office proposes to change the heading of § 2.165 to ''Petition to Commissioner to review refusal''; to remove the last two sentences of the current § 2.165(a)(1); and to simplify the language of the rule.

The Office proposes to remove present § 2.166 because it is unnecessary. Proposed §§ 2.163(b) and 2.165(b) set forth the times when a registration will be cancelled.

The Office proposes to add § 2.166, ''Affidavit of continued use or excusable nonuse combined with renewal application,'' stating that an affidavit or declaration under § 8 of the Act and a renewal application under § 9 of the Act may be combined in a single document.

The Office proposes to revise § 2.167(c) to delete the requirement that an affidavit or declaration under § 15 of the Act (§ 15 affidavit) specify the type of commerce in which the mark is used.

The Office proposes to change the heading of § 2.168 to ''Affidavit or declaration under § 15 combined with affidavit or declaration under § 8, or with renewal application.'' The Office proposes to revise § 2.168(a) to state that a § 15 affidavit may be combined with a § 8 affidavit, if the combined affidavit meets the requirements of both §§ 8 and 15 of the Act. The Office proposes to revise § 2.168(b) to state that a § 15 affidavit can be combined with a renewal application under § 9 of the Act, if the requirements of both §§ 9 and 15 of the Act are met.

The Office proposes to revise § 2.173(a) to simplify the language.

The Office proposes to revise § 2.181 to indicate that renewal of a registration is subject to the provisions of § 8 of the Act. This is consistent with the amendment to § 9(a) of the Act.

The Office proposes to change the heading of § 2.182 to ''Time for filing renewal application,'' and to revise it to state that the renewal application must be filed within one year before the expiration date of the registration, or within the six-month grace period after the expiration date with an additional fee. This changes current practice. Section 9 of the Act now requires filing within six months before the expiration of the registration, or within a three-month grace period thereafter with a late fee.

The Office proposes to change the heading of § 2.183 to ''Requirements for a complete renewal application,'' and to revise it to delete the present renewal requirements and substitute new ones based on amended § 9 of the Act. In particular, the Office proposes to delete the requirements for a specimen and declaration of use or excusable nonuse on or in connection with the goods or services listed in the registration, because these requirements have been removed from § 9 of the Act. The proposed requirements for renewal are: (1) a signed request for renewal; (2) a renewal fee for each class; (3) a grace period surcharge for each class if the renewal application is filed during the grace period; (4) if the registrant is not domiciled in the United States, a designation of a domestic representative; and (5) if the renewal application covers less than all the goods or services, a list of the particular goods or services to be renewed.

The Office proposes to state in § 2.183(f) that if the fee submitted is enough to pay for at least one class, but not enough to pay for all the classes, and the class(es) covered by the renewal application are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied; that additional fee(s) may be submitted if the requirements of § 2.185 are met; and that if the required fee(s) are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class.

The Office proposes to revise and simplify the language of current § 2.184 and to transfer some of its provisions to new § 2.186. The revised provisions state that the Office will issue a notice if the renewal application is not

acceptable; that a response to the refusal of renewal must be filed within six months of the mailing date of the Office action, or before the expiration date of the registration, whichever is later; and that the registration will expire if the renewal application is not filed within the time periods set forth in § 9(a) of the Act.

The Office proposes to add § 2.185, ''Correcting deficiencies in renewal application.'' This section changes current practice. There are now some deficiencies that can be corrected after the statutory deadline for filing the renewal application, such as supplying evidence that the party who filed the application was the owner of the registration on the filing date. Other requirements, such as the renewal fee, must be met before the end of the statutory filing period, or the registration will expire. *In re Culligan International Co.,* 915 F.2d 680, 16 USPQ2d 1234 (Fed. Cir. 1990).

Under amended § 9, the renewal application must be filed within the renewal period or grace period specified in § 9(a) of the Act, or the registration will expire. However, if the renewal application is timely filed, any deficiencies may be corrected after expiration of the statutory filing period, with payment of a deficiency surcharge.

The Office proposes to state in § 2.185(a)(1) that if the renewal application is filed within one year before the registration expires, deficiencies may be corrected before the registration expires without paying a deficiency surcharge, or after the registration expires with payment of the deficiency surcharge required by § 9(a) of the Act.

The Office proposes to state in § 2.185(a)(2) that if the renewal application is filed during the grace period, deficiencies may be corrected before the expiration of the grace period without paying a deficiency surcharge, and after the expiration of the grace period with payment of the deficiency surcharge required by § 9(a) of the Act.

The Office proposes to state in § 2.185(b) that if the renewal application is not filed within the time periods set forth in § 9(a) of the Act, the registration will expire. This deficiency cannot be cured.

Because § 9(a) of the Act specifically requires a deficiency surcharge, the Office proposes to charge the deficiency surcharge for correcting any type of deficiency, even one that could be corrected for no fee under current law.

The Office proposes to add new § 2.186, ''Petition to Commissioner to review refusal of renewal.''

Proposed § 2.186(a) states that a response to the examiner's initial refusal is required before filing a petition to the Commissioner, unless the examiner directs otherwise. This is consistent with the current § 2.184(a).

Proposed § 2.186(b) states that if the examiner maintains the refusal of the renewal application, a petition to the Commissioner to review the action may be filed within six months of the mailing date of the Office action maintaining the refusal; and that if no petition is filed within six months of the mailing date of the Office action, the registration will expire. This is consistent with the current § 2.184(b).

Proposed § 2.186(c) states that a decision by the Commissioner is necessary before filing an appeal or commencing a civil action in any court. This is consistent with the current § 2.184(d).

The Office proposes to amend § 3.16 to state that an applicant may assign an application based on § 1(b) of the Act once the applicant files an amendment to allege use under § 1(c) of the Act.

The Office proposes to change the heading of § 3.24 to ''Requirements for documents and cover sheets relating to patents and patent applications.'' The Office proposes to list the recording requirements for patents in § 3.24, and to add new § 3.25 listing the recording requirements for trademark applications and registrations.

Section 3.25 identifies the types of documents one can submit when recording documents that affect some interest in trademark applications or registrations. The section also identifies the Office's preferred format for cover sheets and other documents.

The Office proposes to revise § 3.28 to state a preference that separate cover sheets be used for patents and trademarks.

The Office proposes to revise § 3.31(a)(4) to set forth the requirements for identifying a trademark application where the application serial number is not known.

The Office proposes to delete the requirement currently in § 3.31(a)(9) that a cover sheet contain a statement that the information on the cover sheet is correct and that any copy of the document submitted is a true copy.

The Office proposes to amend § 3.31(b) to state that a cover sheet ''should'' not refer to both patents and trademarks; and to put the public on notice that if a cover sheet contains both patent and trademark information, all information will become public after recordation.

The Office proposes to add § 3.31(d) to state the Office's preference that a trademark cover sheet include the serial number or registration number of the trademark affected by the conveyance or transaction, an identification of the mark, and a description of the mark.

The Office proposes to add § 3.31(e) to state the Office's preference that the cover sheet include the total number of applications, registrations, or patents identified on the cover sheet and the total fee.

The Office proposes to revise § 6.1 to incorporate classification changes that became effective January 1, 1997, as listed in the International Classification of Goods and Services for the Purposes of the Registration of Marks (7th ed. 1996), published by the World Intellectual Property Organization (WIPO).

**Environmental, Energy, and Other Considerations**

The Office has determined that the proposed rule changes have no federalism implications affecting the relationship between the National Government and the State as outlined in Executive Order 12612.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration, that the proposed rule changes will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). This rule implements the Trademark Law Treaty Implementation Act and simplifies and clarifies procedures for registering trademarks and maintaining and renewing trademark registrations. The rule will not significantly impact any businesses. The principal effect of the rule is to make it easier for applicants to obtain a filing date. No additional requirements are added to maintain registrations. Furthermore, this rule simplifies the procedures for registering trademarks in proposed sections 2.21, 2.32, 2.34, 2.45, 2.76, 2.88, 2.161, 2.167 and 2.183 of the Trademark rules. As a result, an initial regulatory flexibility analysis was not prepared.

The proposed rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Executive Order 12612, and the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). The proposed changes have been determined to be not significant for purposes of Executive Order 12866.

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 contains collections of information requirements subject to the PRA. This rule discusses changes in the information required from the public to obtain registrations for trademarks and service marks, to submit affidavits or declarations of continued use or excusable nonuse, statements of use, requests for extensions of time to file statements of use, and to renew registrations. This rule proposes to delete requirements to identify the method of use of a mark and the type of commerce in which a mark is used. Additionally, the rule removes the requirement that requests for recordation of documents be accompanied by originals or true copies of these documents. The rule proposes to allow for the filing of powers of attorney that pertain to multiple registrations or applications for registration, and proposes certain requirements for filing such powers of attorney. Additionally, the rule proposes requirements for submitting § 8 affidavits of continued use or excusable nonuse combined with § 9 renewal applications, or § 15 affidavits or declarations of incontestability combined with either § 8 affidavits or declarations or with § 9 renewal applications.

An information collection package supporting the changes to the above information requirements, as discussed in this rule, has been submitted to OMB for review and approval. The public reporting burden for this collection of information is estimated to average as follows: seventeen minutes for applications to obtain registrations based on an intent to use the mark under § 1(b) of the Act, if completed using paper forms; fifteen minutes for applications to obtain registrations based on an intent to use the mark under § 1(b) of the Act, if completed using an electronic form; twenty-three minutes for applications to obtain registrations based on use of the mark under § 1(a) of the Act, if completed using paper forms; twenty-one minutes for applications to obtain registrations based on use of the mark under § 1(a) of the Act, if completed using an electronic form; twenty minutes for applications to obtain registrations based on an earlier-filed foreign application under § 44(d) of the Act, if completed using paper forms; nineteen minutes for applications to obtain registrations based on an earlier-filed foreign application under § 44(d) of the Act, if completed using an electronic form; twenty minutes for applications to obtain registrations based on registration of a mark in a foreign applicant's country of origin under § 44(e) of the Act; thirteen minutes for allegations of use of the mark under §§ 2.76 and 2.88; ten minutes for requests for extension of time to file statements of use under § 2.89; fourteen minutes for renewal applications under § 9 of the Act combined with affidavits or declarations of continued use or excusable nonuse under § 8 of the Act; fourteen minutes for combined affidavits/declarations of use and incontestability under §§ 8 and 15 of the Act; eleven minutes for an affidavit or declaration of continued use or excusable nonuse under § 8 of the Act; eleven minutes for a renewal application under § 9 of the Act; eleven minutes for a declaration of incontestability under § 15 of the Act; three minutes for powers of attorney and designations of domestic representatives; and thirty minutes for a trademark recordation form cover sheet. These time estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 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.

This rule also involves information requirements associated with amendments, oppositions, and petitions to cancel. The amendments and the oppositions have been previously approved by OMB under control number 0651–0009. The petitions to cancel have been previously approved by OMB under control number 0651–0040. These requirements are not being resubmitted for review at this time. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202–3513 (Attn: Ari Leifman), and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, N.W., Washington, D.C. 20230 (Attn: PTO Desk Officer).

Proposed §§ 2.21, 2.32, 2.34, 2.45, 2.76, 2.88, 2.161, 2.167, and 2.183 may lessen the public reporting burden.

An application to obtain a registration can only be accepted for review if a respondent provides certain required minimum elements; otherwise, the Office will return the application to the respondent. Proposed § 2.21 lessens the number of these required minimum elements. Therefore, the number of applications returned to respondents may decline, and this may result in fewer multiple submissions of applications to obtain registrations from single respondents.

An application to obtain registration must identify at least one legal basis for filing the application. Currently, two of these bases, use of the mark and a bona fide intention to use the mark, may not be identified in a single application. Proposed § 2.34 allows a respondent to assert each of these bases with respect to different goods or services in a single application. This may allow some applicants to submit a single application rather than multiple applications.

Currently, applicants must describe the manner in which the mark is used or intended to be used in applications for registration of trademarks and service marks, in applications for registration of collective membership marks, in applications for registration of certification marks, in amendments to allege use of a mark, and in statements of use. Proposed § 2.32 removes this requirement with respect to applications for registration of trademarks, service marks and collective membership marks; proposed § 2.45 removes this requirement with respect to applications to register certification marks; proposed § 2.76 removes this requirement with respect to amendments to allege use; and proposed § 2.88 removes this requirement with respect to statements of use. The Office estimates that the removal of this requirement may reduce the time needed to complete each of these submissions by two minutes.

Currently, the type of commerce in which a mark is used must be specified in affidavits or declarations of continued use or excusable nonuse, in applications for renewal, and in declarations of incontestability. Proposed § 2.161 eliminates this requirement with respect to declarations of continued use; proposed § 2.167 eliminates this requirement with respect to declarations of incontestability; and proposed § 2.183 eliminates this requirement with respect to applications for renewal. The Office estimates that the removal of this requirement may reduce the time needed to complete each of these submissions by one minute.

**List of Subjects**

*37 CFR Part 1*

Administrative practice and procedure, Patents.

*37 CFR Part 2*

Administrative practice and procedure, Courts, Lawyers, Trademarks.

*37 CFR Part 3*

Administrative practice and procedure, Patents, Trademarks.

*37 CFR Part 6*

Trademarks.

For the reasons given in the preamble and under the authority contained in 35 U.S.C. 6 and 15 U.S.C. 41, as amended, the Patent and Trademark Office proposes to amend parts 1, 2, 3, and 6 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. 6, unless otherwise noted.

1a. Amend § 1.1 by revising paragraph (a)(2) to read as follows:

### § 1.1 Addresses for correspondence with the Patent and Trademark Office.

(a) * * *

(2) *Trademark correspondence.*

(i) Send all trademark filings and correspondence, except as specified below or unless submitting electronically, to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513.

(ii) Send trademark-related documents for the Assignment Division to record to: Commissioner of Patents and Trademarks, Box Assignment, Washington, D.C. 20231.

(iii) Send requests for certified or uncertified copies of trademark applications and registrations, other than coupon orders for uncertified copies of registrations, to: Commissioner of Patents and Trademarks, Box 10, Washington, D.C. 20231.

(iv) Send requests for coupon orders for uncertified copies of registrations to: Commissioner of Patents and Trademarks, Box 9, Washington, D.C. 20231.

(v) An applicant may transmit an application for trademark registration electronically, but only if the applicant uses the Patent and Trademark Office's electronic form.

* * * * *

2. Amend § 1.4 by revising the last sentence of paragraph (a)(2), revising paragraphs (d)(1) and (d)(1)(ii), and adding a new paragraph (d)(1)(iii) to read as follows:

### § 1.4 Nature of correspondence and signature requirements.

(a) * * *

(2) * * * 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 reexamination 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 trademark applications and registrations, §§ 2.11 to 2.186.

* * * * *

(d)(1) Each piece of correspondence, except as provided in paragraphs (e) and (f) of this section, filed in a patent or trademark application, reexamination proceeding, patent or trademark interference proceeding, patent file or trademark registration file, trademark opposition proceeding, trademark cancellation proceeding, or trademark concurrent use proceeding, which requires a person's signature, must:

(i) * * *

(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; or

(iii) Where an electronically transmitted trademark filing is permitted, 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; and print, sign and date in permanent ink, and maintain a paper copy of the electronic submission. Additionally, the person who signs the filing must maintain a verified statement confirming that the signatory has adopted the symbol shown in the signature block to verify the contents of the filing, and that the information in the electronic submission is identical to the information in the paper copy of the submission. This verified statement should not be submitted; or

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

* * * * *

3. Amend § 1.5 by revising paragraph (c) to read as follows:

### § 1.5 Identification of application, patent or registration.

* * * * *

(c)(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.

* * * * *

4. Amend § 1.6 by revising paragraph (a)(1), and adding new paragraph (a)(4), to read as follows:

### § 1.6 Receipt of correspondence.

(a) * * *

(1) The Patent and Trademark 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 by facsimile under paragraph (a)(3), or filed electronically under paragraph (a)(4) of this section, no correspondence is received in the Office on Saturdays, Sundays, or Federal holidays within the District of Columbia.

* * * * *

(4) Trademark-related correspondence transmitted electronically will be stamped with the date on which the Office receives the transmission.

* * * * *

5. Revise § 1.23 to read as follows:

### § 1.23 Method of payment.

All payments of money required for Patent and Trademark Office fees, including fees for the processing of international applications (§ 1.445), shall be made in U.S. dollars and in the form of cashier's checks, Treasury notes, post office money orders, or by certified check. If sent in any other form, the Office may delay or cancel the credit until collection is made. Payments for USPTO electronic applications and other electronic submissions authorized by the USPTO may be made by credit card identified on the electronic form. Money orders and checks must be made payable to the Commissioner of Patents and Trademarks. Remittances from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required. Money sent by mail to the Office will be at the risk of the sender; letters containing currency should be registered.

## PART 2—RULES APPLICABLE TO TRADEMARK CASES

6. The authority citation for part 2 continues to read as follow:

**Authority:** 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

6a. Revise § 2.1 to read as follows:

**§ 2.1 Sections of part 1 applicable.**

Sections 1.1 to 1.26 of this chapter apply to trademark cases, except those parts that specifically refer to patents, and except § 1.22 to the extent that it is inconsistent with §§ 2.85(e), 2.101(d), 2.111(c), 2.164, or 2.185. Other sections of part 1 incorporated by reference in part 2 also apply to trademark cases.

7. Section 2.6 is amended by revising the introductory text, paragraphs (a)(5), (a)(6), (a)(12), (a)(13), (a)(14), (a)(19), (a)(20), and (a)(21) to read as follows:

**§ 2.6 Trademark fees.**

The Patent and Trademark Office requires the following fees and charges:

(a) * * *

| | |
|---|---|
| (5) For filing an application for renewal of a registration, per class | $200.00 |
| (6) Additional fee for filing a renewal application during the grace period, per class | 100.00 |
| * * * * * * * | |
| (12) For filing an affidavit under section 8 of the Act, per class | 200.00 |
| (13) For filing an affidavit under section 15 of the Act, per class | 200.00 |
| (14) Additional fee for filing a section 8 affidavit during the grace period, per class | 100.00 |
| * * * * * * * | |
| (19) For filing a request to divide an application, per new application (file wrapper) created | 300.00 |
| (20) For correcting a deficiency in a section 8 affidavit | 100.00 |
| (21) For correcting a deficiency in a renewal application | 100.00 |

8. Amend § 2.17 by adding paragraphs (c) and (d) to read as follows:

**§ 2.17 Recognition for representation.**

* * * * *

(c) To be recognized as a representative, an attorney as defined in § 10.1(c) of this chapter may file a power of attorney, appear in person, or sign a paper on behalf of an applicant or registrant that is filed with the Office in a trademark case.

(d) A party may file a power of attorney that relates to more than one trademark application or registration, or to all existing and future applications and registrations of that party. A party relying on a power of attorney concerning more than one application or registration must:

(1) Include a copy of the previously filed power of attorney; or

(2) Refer to the power of attorney, specifying the filing date of the previously filed power of attorney; the application serial number (if known), registration number, or *inter partes* proceeding number for which the original power of attorney was filed; and the name of the party who signed the power of attorney; or, if the application serial number is not known, submit a copy of the application or a copy of the mark, and specify the filing date.

9. Revise § 2.20 to read as follows:

**§ 2.20 Declarations in lieu of oaths.**

Instead of an oath, affidavit, verification, or sworn statement, the following language may be used:

I declare pursuant to the provisions of 18 U.S.C. 1001 and under the penalty of perjury that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true. I understand that willful false statements and the like are punishable by fine or imprisonment, or both, and may jeopardize the validity of the application or document or any registration resulting therefrom.

10. Revise § 2.21 to read as follows:

**§ 2.21 Requirements for receiving a filing date.**

(a) The Office will grant a filing date to an application that contains all of the following:

(1) The name of the applicant;

(2) A name and address for correspondence;

(3) A clear drawing of the mark;

(4) A listing of the goods or services; and

(5) The filing fee for at least one class of goods or services, required by § 2.6.

(b) If the applicant does not submit all the elements required in paragraph (a), the Office may return the papers with an explanation of why the filing date was denied.

(c) The applicant may correct and resubmit the application papers. If the resubmitted papers and fee meet all the requirements of paragraph (a) of this section, the Office will grant a filing date as of the date the Office receives the corrected papers.

**§ 2.31 [Reserved]**

11. Remove and reserve § 2.31.

12. Revise § 2.32 to read as follows:

**§ 2.32 Requirements for written application.**

(a) The application must be in English and include the following:

(1) A request for registration;

(2) The name of the applicant(s);

(3)(i) The citizenship of the applicant(s); or

(ii) If the applicant is a corporation, association, partnership or other juristic person, the state or nation under the laws of which the applicant is organized; and

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

(4) The address of the applicant;

(5) One or more bases, as required by § 2.34(a);

(6) A list of the particular goods or services on or in connection with which the applicant uses or intends to use the mark. In a United States application filed under section 44 of the Act, the scope of the goods or services covered by the section 44 basis may not exceed the scope of the goods or services in the foreign application or registration; and

(7) The international class of goods or services, if known. See § 6.1 of this chapter for a list of the international classes of goods and services.

(b) The application must include a verified statement that meets the requirements of § 2.33.

(c) For the requirements for a multiple class application, see § 2.86.

13. Revise § 2.33 to read as follows:

**§ 2.33 Verified statement.**

(a) The application must include a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant. A person who is properly authorized to sign on behalf of the applicant includes a person with legal authority to bind the applicant and/or a person with firsthand knowledge and actual or implied authority to act on behalf of the applicant.

(b)(1) In an application under section 1(a) of the Act, the verified statement must allege:

That the applicant has adopted and is using the mark shown in the accompanying drawing; that the applicant believes it is the owner of the mark; that the mark is in use in commerce, specifying the type of commerce; that to the best of the declarant's knowledge and belief, no other person has

the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of the other person, to cause confusion or mistake, or to deceive; that the specimen shows the mark as used on or in connection with the goods or services; and that the facts set forth in the application are true.

(2) In an application under section 1(b) or section 44 of the Act, the verified statement must allege:

That the applicant has a bona fide intention to use the mark shown in the accompanying drawing in commerce on or in connection with the specified goods or services; that the applicant believes it is entitled to use the mark; that to the best of the declarant's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of the other person, to cause confusion or mistake, or to deceive; and that the facts set forth in the application are true.

(c) If the verified statement is not filed within a reasonable time after it is signed, the Office may require the applicant to submit a substitute verification or declaration under § 2.20 of the applicant's continued use or bona fide intention to use the mark in commerce.

(d) Where an electronically transmitted filing is permitted, the person who signs the verified statement must either:

(1) Place a symbol comprised of numbers and/or letters between two forward slash marks in the signature block on the electronic submission; and print, sign and date in permanent ink, and maintain a paper copy of the electronic submission. Additionally, the applicant must maintain a verified statement confirming that the signatory has adopted the symbol shown in the signature block to verify the contents of the document, and that the information in the electronic submission is identical to the information in the paper copy of the submission. The applicant should not submit this verified statement; or

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

14. Add § 2.34 to read as follows:

**§ 2.34 Bases for filing.**

(a) The application must include one or more of the following four filing bases:

(1) *Use in commerce under section 1(a) of the Act.* The requirements for an application based on section 1(a) of the Act are:

(i) The trademark owner's verified statement that the mark is in use in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the mark was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date;

(ii) The date of the applicant's first use of the mark anywhere on or in connection with the goods or services;

(iii) The date of the applicant's first use of the mark in commerce as a trademark or service mark, specifying the type of commerce; and

(iv) One specimen showing how the applicant actually uses the mark in commerce.

(v) An application may list more than one item of goods, or more than one service, provided the applicant has used the mark on or in connection with all the specified goods or services. The dates of use required by paragraphs (ii) and (iii) of this section may be for only one of the items specified.

(2) *Intent-to-use under section 1(b) of the Act.*

(i) In an application under section 1(b) of the Act, the trademark owner must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

(ii) The application may list more than one item of goods, or more than one service, provided the applicant has a bona fide intention to use the mark in commerce on or in connection with all the specified goods or services.

(3) *Registration of a mark in a foreign applicant's country of origin under section 44(e) of the Act.* The requirements for an application under section 44(e) of the Act are:

(i) The trademark owner's verified statement that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

(ii) A certification or certified copy of a registration in the applicant's country of origin showing that the mark has been registered in that country, and that the registration is in full force and effect. The certification or certified copy must show the name of the owner, the mark, and the goods or services for which the mark is registered. If the certification or certified copy is not in the English language, the applicant must submit a translation.

(iii) If the record indicates that the foreign registration will expire before the United States registration will issue, the applicant must submit a certification or certified copy from the country of origin to establish that the registration has been renewed and will be in force at the time the United States registration will issue. If the certification or certified copy is not in the English language, the applicant must submit a translation.

(iv) The application may list more than one item of goods, or more than one service, provided the applicant has a bona fide intention to use the mark in commerce on or in connection with all the specified goods or services.

(4) *Claim of priority, based upon an earlier-filed foreign application, under section 44(d) of the Act.* The requirements for an application under section 44(d) of the Act are:

(i) A claim of priority, filed within six months of the filing date of the foreign application. Before publication or registration on the Supplemental Register, the applicant must either:

(A) Specify the filing date and country of the first regularly filed foreign application; or

(B) State that the application is based upon a subsequent regularly filed application in the same foreign country, and that any prior-filed application has been withdrawn, abandoned or otherwise disposed of, without having been laid open to public inspection and without having any rights outstanding, and has not served as a basis for claiming a right of priority.

(ii) Include the trademark owner's verified statement that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

(iii) Before the application can be approved for publication, or for registration on the Supplemental Register, the applicant must establish a basis under section 1(a), section 1(b) or section 44(e) of the Act.

(iv) The application may list more than one item of goods, or more than one service, provided the applicant has a bona fide intention to use the mark in commerce on or in connection with all the specified goods or services.

(b)(1) The applicant may claim more than one basis, provided that the applicant satisfies all requirements for the bases claimed. However, the

applicant may not claim both sections 1(a) and 1(b) for the identical goods or services in the same application.

(2) If the applicant claims more than one basis, the applicant must list each basis, followed by the goods or services to which that basis applies. If some or all of the goods or services are covered by more than one basis, this must be stated.

(c) The word ''commerce'' means commerce that Congress may lawfully regulate, as specified in section 45 of the Act.

**§ 2.37 [Removed]**

15. Remove § 2.37.

**§ 2.35 [Redesignated as § 2.37]**

16. Redesignate § 2.35 as § 2.37.

17. Add new § 2.35 to read as follows:

**§ 2.35 Adding, deleting, or substituting bases.**

(a) Before publication, the applicant may add or substitute a basis, if the applicant meets all requirements for the new basis, as stated in § 2.34. The applicant may delete a basis at any time.

(b) An applicant may not amend an application to add or substitute a basis after the mark has been published for opposition. The applicant may delete a basis after publication.

(c) When the applicant substitutes a basis, the Office will presume that the original basis was valid and the application will retain the original filing date, unless there is contradictory evidence in the record.

(d) If an applicant properly claims a section 44(d) basis in addition to another basis, the applicant will retain the priority filing date under section 44(d) no matter which basis the applicant perfects.

(e) The applicant may add or substitute a section 44(d) basis only within the six-month priority period following the filing date of the foreign application.

(f) When the applicant adds or substitutes a basis, the applicant must list each basis, followed by the goods or services to which that basis applies.

(g) When the applicant deletes a basis, the applicant must also delete any goods or services covered solely by the deleted basis.

(h) Once an applicant claims a section 1(b) basis as to any or all of the goods or services, the applicant may not amend the application to seek registration under section 1(a) of the Act for those goods or services unless the applicant files an allegation of use under section 1(c) or section 1(d) of the Act.

18. Amend § 2.38 by revising paragraph (a) to read as follows:

**§ 2.38 Use by predecessor or by related companies.**

(a) If the first use of the mark was by a predecessor in title or by a related company (sections 5 and 45 of the Act), and the use inures to the benefit of the applicant, the dates of first use (§§ 2.34(a)(1)(ii) and (iii)) may be asserted with a statement that first use was by the predecessor in title or by the related company, as appropriate.

* * * * *

**§ 2.39 [Removed]**

19. Remove and reserve § 2.39.

20. Revise § 2.45 to read as follows:

**§ 2.45 Certification mark.**

(a) In an application to register a certification mark under section 1(a) of the Act, the application shall include all applicable elements required by the preceding sections for trademarks. In addition, the application must: specify the conditions under which the certification mark is used; allege that the applicant exercises legitimate control over the use of the mark; allege that the applicant is not engaged in the production or marketing of the goods or services to which the mark is applied; and include a copy of the standards that determine whether others may use the certification mark on their goods and/or in connection with their services.

(b) In an application to register a certification mark under section 1(b) or section 44 of the Act, the application shall include all applicable elements required by the preceding sections for trademarks. In addition, the application must: specify the conditions under which the certification mark is intended to be used; allege that the applicant intends to exercise legitimate control over the use of the mark; and allege that the applicant will not engage in the production or marketing of the goods or services to which the mark is applied. When the applicant files an amendment to allege use under section 1(c) of the Act, or a statement of use under section 1(d) of the Act, the applicant must submit a copy of the standards that determine whether others may use the certification mark on their goods and/or in connection with their services.

**§ 2.51 [Amended]**

21. In § 2.51, remove paragraphs (c), (d) and (e).

22. Revise § 2.52 to read as follows:

**§ 2.52 Types of drawings and format for drawings.**

(a) A drawing depicts the mark sought to be registered. The drawing must show only one mark. The applicant must include a clear drawing of the mark when the application is filed. There are two types of drawings:

(1) *Typed drawing.* The drawing may be typed if the mark consists only of words, letters, numbers, common forms of punctuation, or any combination of these elements. In a typed drawing, every word or letter must be typed in uppercase type. If the applicant submits a typed drawing, the application is not limited to the mark depicted in any special form or lettering.

(2) *Special form drawing.* A special form drawing is required if the mark has a two or three-dimensional design; or color; or words, letters, or numbers in a particular style of lettering; or unusual forms of punctuation.

(i) Special form drawings must be made with a pen or by a process that will provide high definition when copied. A photolithographic, printer's proof copy, or other high quality reproduction of the mark may be used. Every line and letter, including color lining and lines used for shading, must be black. All lines must be clean, sharp, and solid, and must not be fine or crowded. Gray tones or tints may not be used for surface shading or any other purpose.

(ii) If necessary to adequately depict the commercial impression of the mark, the applicant may be required to submit a drawing that shows the placement of the mark by surrounding the mark with a proportionately accurate broken-line representation of the particular goods, packaging, or advertising on which the mark appears. The applicant must also use broken lines to show any other matter not claimed as part of the mark. For any drawing using broken lines to indicate placement of the mark, or matter not claimed as part of the mark, the applicant must include in the body of the application a written description of the mark and explain the purpose of the broken lines.

(iii) If the mark has three-dimensional features, the applicant must submit a drawing that depicts a single rendition of the mark, and the applicant must include a description of the mark indicating that the mark is three-dimensional.

(iv) If the mark has motion, the applicant may submit a drawing that depicts a single point in the movement, or the applicant may submit a square drawing that contains up to four freeze frames showing various points in the movement, whichever best depicts the commercial impression of the mark. The applicant must also submit a written description of the mark.

(v) If the mark has color, the applicant may claim that all or part of the mark consists of one or more colors. To claim

color, the applicant must submit a statement explaining where the color or colors appear in the mark and the nature of the color(s).

(vi) If a drawing cannot adequately depict all significant features of the mark, the applicant must also submit a written description of the mark.

(3) *Sound, scent, and non-visual marks.* The applicant is not required to submit a drawing if the applicant's mark consists only of a sound, a scent, or other completely non-visual matter. For these types of marks, the applicant must submit a detailed written description of the mark.

(b) *Recommended Format for special form drawings*—(1) *Type of paper and ink.* The drawing should be on a piece of non-shiny, white paper that is separate from the application. Black ink should be used to depict the mark.

(2) *Size of paper and size of mark.* The drawing should be on paper that is 8 to 8½ inches (20.3 to 21.6 cm.) wide and 11 to 11.69 inches (27.9 to 29.7 cm.) long. One of the shorter sides of the sheet should be regarded as its top edge. The drawing should be between 2.5 inches (6.1 cm.) and 4 inches (10.3 cm.) high and/or wide. There should be at least a 1 inch (2.5 cm.) margin between the drawing and the edges of the paper, and at least a 1 inch (2.5 cm.) margin between the drawing and the heading.

(3) *Heading.* Across the top of the drawing, beginning one inch (2.5 cm.) from the top edge, the applicant should type the following: applicant's name; applicant's address; the goods or services recited in the application, or a typical item of the goods or services if numerous items are recited in the application; the date of first use of the mark and first use of the mark in commerce in an application under section 1(a) of the Act; the priority filing date of the relevant foreign application in an application claiming the benefit of a prior foreign application under section 44(d) of the Act. If the information in the heading is lengthy, the heading may continue onto a second page, but the mark should be depicted on the first page.

(c) *Drawings in electronically transmitted applications.* For an electronically transmitted application, if the drawing is in special form, the applicant must attach a digitized image of the mark to the electronic submission.

23. Revise § 2.56 to read as follows:

**§ 2.56 Specimens.**

(a) An application under section 1(a) of the Act, an amendment to allege use under § 2.76, and a statement of use under § 2.88 must each include one specimen showing the mark as used on or in connection with the goods, or in the sale or advertising of the services in commerce.

(b)(1) A trademark specimen is a label, tag, or container for the goods, or a display associated with the goods. The Office may accept another document related to the goods or the sale of the goods when it is not possible to place the mark on the goods or packaging for the goods.

(2) A service mark specimen must show the mark as actually used in the sale or advertising of the services.

(3) A collective trademark or collective service mark specimen must show how a member uses the mark on the member's goods or in the sale or advertising of the member's services.

(4) A collective membership mark specimen must show use by members to indicate membership in the collective organization.

(5) A certification mark specimen must show how a person other than the owner uses the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of that person's goods or services; or that members of a union or other organization performed the work or labor on the goods or services.

(c) A photocopy or other reproduction of a specimen of the mark as actually used on or in connection with the goods, or in the sale or advertising of the services, is acceptable. However, a photocopy of the drawing required by § 2.51 is not a proper specimen.

(d)(1) The specimen should be flat, and not larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen of this size is not available, the applicant may substitute a suitable photograph or other facsimile.

(2) If the applicant files a specimen exceeding these size requirements (a ''bulky specimen''), the Office will create a facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper.

(3) In the absence of non-bulky alternatives, the Office may accept an audio or video cassette tape recording, CD–ROM, or other appropriate medium.

(4) For an electronically transmitted application, or other electronic submission, the specimen must be submitted as a digitized image.

**§ 2.57 [Removed]**

24. Remove and reserve § 2.57.

**§ 2.58 [Removed]**

25. Remove and reserve § 2.58.

26. Revise § 2.59 to read as follows:

**§ 2.59 Filing substitute specimen(s).**

(a) In an application under section 1(a) of the Act, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services. The applicant must verify by an affidavit or declaration under § 2.20 that the substitute specimens were in use in commerce at least as early as the filing date of the application. Verification is not required if the specimen is a duplicate or facsimile of a specimen already of record in the application.

(b) In an application under section 1(b) of the Act, after filing either an amendment to allege use under § 2.76 or a statement of use under § 2.88, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services. If the applicant submits substitute specimen(s), the applicant must:

(1) For an amendment to allege use under § 2.76, verify by affidavit or declaration under § 2.20 that the applicant used the substitute specimen(s) in commerce prior to filing the amendment to allege use.

(2) For a statement of use under § 2.88, verify by affidavit or declaration under § 2.20 that the applicant used the substitute specimen(s) in commerce either prior to filing the statement of use or prior to the expiration of the deadline for filing the statement of use.

27. Revise § 2.66 to read as follows:

**§ 2.66 Revival of abandoned applications.**

(a) The applicant may file a petition to revive an application abandoned because the applicant did not timely respond to an Office action or notice of allowance. The applicant must file the petition:

(1) Within two months of the mailing date of the notice of abandonment; or

(2) Within two months of actual knowledge of the abandonment, if the applicant did not receive the notice of abandonment, and the applicant was diligent in checking the status of the application.

(b) The requirements for filing a petition to revive an application abandoned because the applicant did not timely respond to an Office action are:

(1) The petition fee required by § 2.6;

(2) A statement, signed by someone with firsthand knowledge of the facts, that the delay in filing the response on or before the due date was unintentional; and

(3) Unless the applicant alleges that it did not receive the Office action, the proposed response.

(c) The requirements for filing a petition to revive an application abandoned because the applicant did not timely respond to a notice of allowance are:

(1) The petition fee required by § 2.6;

(2) A statement, signed by someone with firsthand knowledge of the facts, that the delay in filing the statement of use (or request for extension of time to file a statement of use) on or before the due date was unintentional;

(3) Unless the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, the required fees for the number of requests for extensions of time to file a statement of use that the applicant should have filed under § 2.89 if the application had never been abandoned;

(4) Unless the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, either a statement of use under § 2.88 or a request for an extension of time to file a statement of use under § 2.89; and

(5) Unless a statement of use is filed with or before the petition, or the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, the applicant must file any further requests for extensions of time to file a statement of use under § 2.89 that become due while the petition is pending, or file a statement of use under § 2.88.

(d) In an application under section 1(b) of the Act, the Commissioner will not grant the petition if this would permit the filing of a statement of use more than 36 months after the mailing date of the notice of allowance under section 13(b)(2) of the Act.

(e) The Commissioner will grant the petition to revive if the applicant complies with the requirements listed above and establishes that the delay in responding was unintentional.

(f) If the Commissioner denies a petition, the applicant may request reconsideration, if the applicant:

(1) Files the request within two months of the mailing date of the decision denying the petition; and

(2) Pays a second petition fee under § 2.6.

28. Revise § 2.71 to read as follows:

**§ 2.71 Amendments to correct informalities.**

The applicant may amend the application during the course of examination, when required by the Office or for other reasons.

(a) The applicant may amend the application to clarify or limit, but not to broaden, the identification of goods and/or services.

(b)(1) If the declaration or verification of an application under § 2.33 is unsigned or signed by the wrong party, the applicant may submit a substitute verification or declaration under § 2.20.

(2) If the declaration or verification of a statement of use under § 2.88, or a request for extension of time to file a statement of use under § 2.89, is unsigned or signed by the wrong party, the applicant must submit a substitute verification before the expiration of the statutory deadline for filing the statement of use.

(c) The applicant may amend the dates of use, provided that the applicant supports the amendment with an affidavit or declaration under § 2.20, except that the following amendments are not permitted:

(1) In an application under section 1(a) of the Act, the applicant may not amend the application to specify a date of use that is subsequent to the filing date of the application;

(2) In an application under section 1(b) of the Act, after filing a statement of use under § 2.88, the applicant may not amend the statement of use to specify a date of use that is subsequent to the expiration of the deadline for filing the statement of use.

(d) The applicant may amend the application to correct the name of the applicant, if there is a mistake in the manner in which the name of the applicant is set out in the application. The amendment must be supported by an affidavit or declaration under § 2.20, signed by the applicant. However, the application cannot be amended to set forth a different entity as the applicant. An application filed in the name of an entity that did not own the mark as of the filing date of the application is void.

29. Revise § 2.72 to read as follows:

**§ 2.72 Amendments to description or drawing of the mark.**

(a) In an application based on use in commerce under section 1(a) of the Act, the applicant may amend the description or drawing of the mark only if:

(1) The specimens originally filed, or substitute specimens filed under § 2.59(a), support the proposed amendment; and

(2) The proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

(b) In an application based on a bona fide intention to use a mark in commerce under section 1(b) of the Act, the applicant may amend the description or drawing of the mark only if:

(1) The specimens filed with an amendment to allege use or statement of use, or substitute specimens filed under § 2.59(b), support the proposed amendment; and

(2) The proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

(c) In an application based on a claim of priority under section 44(d) of the Act, or on a mark duly registered in the country of origin of the foreign applicant under section 44(e) of the Act, the applicant may amend the description or drawing of the mark only if:

(1) The description or drawing of the mark in the foreign registration certificate supports the amendment; and

(2) The proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

30. Amend § 2.76 by revising paragraphs (b), (e)(2), and (e)(3), and adding paragraphs (i) and (j) to read as follows:

**§ 2.76 Amendment to allege use.**

* * * * *

(b) A complete amendment to allege use must include:

(1) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.33(a)(2)) that:

(i) The applicant believes it is the owner of the mark; and

(ii) The mark is in use in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, the type of commerce, and those goods or services specified in the application on or in connection with which the applicant uses the mark in commerce.

(2) One specimen of the mark as actually used in commerce. See § 2.56 for the requirements for specimens; and

(3) The fee per class required by § 2.6.

* * * * *

(e) * * *

(2) One specimen or facsimile of the mark as used in commerce; and

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person

properly authorized to sign on behalf of the applicant that the mark is in use in commerce.

* * * * *

(i) If the applicant does not file the amendment to allege use within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the mark is still in use in commerce.

(j) For the requirements for a multiple class application, see § 2.86.

31. Revise § 2.86 to read as follows:

**§ 2.86 Application may include multiple classes.**

(a) In a single application, an applicant may apply to register the same mark for goods and/or services in multiple classes. The applicant must:

(1) Specifically identify the goods or services in each class;

(2) Submit an application filing fee for each class; and

(3) Include either dates of use (see §§ 2.34(a)(1)(ii) and (iii)) and one specimen for each class, or a statement of a bona fide intention to use the mark in commerce on or in connection with all the goods or services specified in each class. The applicant may not claim both use in commerce and a bona fide intention to use the mark in commerce for the identical goods or services in one application.

(b) An amendment to allege use under § 2.76 or a statement of use under § 2.88 must include, for each class, the required fee, dates of use, and one specimen. The applicant may not file the amendment to allege use or statement of use until the applicant has used the mark on all the goods or services, unless the applicant files a request to divide. See § 2.87 for information regarding requests to divide.

(c) The Office will issue a single certificate of registration for the mark, unless the applicant files a request to divide. See § 2.87 for information regarding requests to divide.

32. Amend § 2.88 by revising paragraphs (b) and (e) and by adding paragraphs (k) and (l) to read as follows:

**§ 2.88 Filing statement of use after notice of allowance.**

* * * * *

(b) A complete statement of use must include:

(1) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.33(a)(2)) that:

(i) The applicant believes it is the owner of the mark; and

(ii) The mark is in use in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, the type of commerce, and those goods or services specified in the notice of allowance on or in connection with which the applicant uses the mark in commerce;

(2) One specimen of the mark as actually used in commerce. See § 2.56 for the requirements for specimens; and

(3) The fee per class required by § 2.6.

* * * * *

(e) The Office will review a timely filed statement of use to determine whether it meets the following minimum requirements:

(1) The fee for at least a single class, required by § 2.6;

(2) One specimen of the mark as used in commerce;

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant that the mark is in use in commerce. If the verification or declaration is unsigned or signed by the wrong party, the applicant must submit a substitute verification on or before the statutory deadline for filing the statement of use.

* * * * *

(k) If the statement of use is not filed within a reasonable time after the date it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the mark is still in use in commerce.

(l) For the requirements for a multiple class application, see § 2.86.

33. Amend § 2.89 by revising paragraphs (a), (b), and (d) and by adding paragraph (h) to read as follows:

**§ 2.89 Extensions of time for filing a statement of use.**

(a) The applicant may request a six-month extension of time to file the statement of use required by § 2.88. The extension request must be filed within six months of the mailing date of the notice of allowance under section 13(b)(2) of the Act and must include the following:

(1) A written request for an extension of time to file the statement of use;

(2) The fee per class required by § 2.6; and

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.33(a)(2)) that the applicant still has a bona fide intention to use the mark in commerce, specifying the relevant goods or services. If the verification is unsigned or signed by the wrong party, the applicant must submit a substitute verification within six months of the mailing date of the notice of allowance.

(b) Before the expiration of the previously granted extension of time, the applicant may request further six-month extensions of time to file the statement of use by submitting the following:

(1) A written request for an extension of time to file the statement of use;

(2) The fee per class required by § 2.6;

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.33(a)(2)) that the applicant still has a bona fide intention to use the mark in commerce, specifying the relevant goods or services. If the verification is unsigned or signed by the wrong party, the applicant must submit a substitute verification before the expiration of the previously granted extension; and

(4) A showing of good cause, as specified in paragraph (d) of this section.

* * * * *

(d) The showing of good cause must include a statement of the applicant's ongoing efforts to make use of the mark in commerce on or in connection with each of the relevant goods or services. Those efforts may include product or service research or development, market research, manufacturing activities, promotional activities, steps to acquire distributors, steps to obtain governmental approval, or other similar activities. In the alternative, the applicant must submit a satisfactory explanation for the failure to make efforts to use the mark in commerce.

* * * * *

(h) If the extension request is not filed within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the applicant still has a bona fide intention to use the mark in commerce.

34. Amend § 2.101 by revising paragraph (d)(1) to read as follows:

**§ 2.101 Filing an opposition.**

* * * * *

(d)(1) The opposition must be accompanied by the required fee for each party joined as opposer for each class in the application for which registration is opposed (see § 2.6). If no fee, or a fee insufficient to pay for one person to oppose the registration of a mark in at least one class, is submitted within thirty days after publication of the mark to be opposed or within an extension of time for filing an

opposition, the opposition will not be refused if the required fee(s) is submitted to the Patent and Trademark Office within the time limit set in the notification of this defect by the Office.

* * * * *

35. Amend § 2.111 by revising paragraph (c)(1) to read as follows:

**§ 2.111 Filing petition for cancellation.**

* * * * *

(c)(1) The petition must be accompanied by the required fee for each class in the registration for which cancellation is sought (see § 2.6). If the fee submitted is insufficient for a cancellation against all of the classes in the registration, and the particular class or classes against which the cancellation is filed are not specified, the Office will issue a written notice allowing petitioner a set time in which to submit the required fees(s) (provided that the five-year period, if applicable, has not expired) or to specify the class or classes sought to be cancelled. If the required fee(s) is not submitted, or the specification made, within the time set in the notice, the cancellation will be presumed to be against the class or classes in ascending order, beginning with the lowest numbered class, and including the number of classes in the registration for which the fees submitted are sufficient to pay the fee due for each class.

* * * * *

36. Amend § 2.146 by revising paragraph (d) and by adding paragraphs (i) and (j) to read as follows:

**§ 2.146 Petitions to the Commissioner.**

* * * * *

(d) A petition must be filed within two months of the mailing date of the action from which relief is requested, unless a different deadline is specified elsewhere in this chapter.

* * * * *

(i) Where a petitioner seeks to revive or reinstate an application or registration that was abandoned or cancelled because papers were lost or mishandled by the Office, the Commissioner may deny the petition if the petitioner was not diligent in checking the status of the application or registration.

(j) If the Commissioner denies a petition, the petitioner may request reconsideration, if the petitioner:

(1) Files the request within two months of the mailing date of the decision denying the petition; and

(2) Pays a second petition fee under § 2.6.

37. Revise § 2.151 to read as follows:

**§ 2.151 Certificate.**

When the Office determines that a mark is registrable, a certificate will be issued stating that the applicant is entitled to registration on the Principal Register or on the Supplemental Register. The certificate will state the date on which the application for registration was filed in the Office, the act under which the mark is registered, the date of issue, and the number of the registration. A reproduction of the mark and pertinent data from the application will be sent with the certificate. A notice of the requirements of section 8 of the Act will accompany the certificate.

38. Revise § 2.155 to read as follows:

**§ 2.155 Notice of publication.**

The Office will send the registrant a notice of publication of the mark and of the requirement for filing the affidavit or declaration required by section 8 of the Act.

39. Revise § 2.156 to read as follows:

**§ 2.156 Not subject to opposition; subject to cancellation.**

The published mark is not subject to opposition, but is subject to petitions to cancel as specified in § 2.111 and to cancellation for failure to file the affidavit or declaration required by section 8 of the Act.

40. Add § 2.160 to read as follows:

**§ 2.160 Affidavit or declaration of continued use or excusable nonuse required to avoid cancellation of registration.**

(a) During the following time periods, the owner of the registration must file an affidavit or declaration of continued use or excusable nonuse, or the registration will be cancelled:

(1)(i) For registrations issued under the Trademark Act of 1946, between the fifth and the sixth year after the date of registration; or

(ii) For registrations issued under prior Acts, between the fifth and the sixth year after the date of publication under section 12(c) of the Act; and

(2) For all registrations, within the year before the end of every ten-year period after the date of registration.

(3) The affidavit or declaration may be filed within a grace period of six months after the end of the deadline set forth in paragraphs (a)(1) and (a)(2), with payment of the grace period surcharge required by section 8(c)(1) of the Act and § 2.6.

(b) For the requirements for the affidavit or declaration, see § 2.161.

41. Revise § 2.161 to read as follows:

**§ 2.161 Requirements for a complete affidavit or declaration of continued use or excusable nonuse.**

A complete affidavit or declaration under section 8 of the Act must:

(a) Be filed by the owner within the period set forth in section 8 of the Act;

(b) Include a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the owner, attesting to the continued use or excusable nonuse of the mark within the period set forth in section 8 of the Act. A person who is properly authorized to sign on behalf of the owner includes a person with legal authority to bind the owner and/or a person with firsthand knowledge and actual or implied authority to act on behalf of the owner.

(c) Include the registration number;

(d)(1) Include the fee required by § 2.6 for each class of goods or services that the affidavit or declaration covers;

(2) If the affidavit or declaration is filed during the grace period under section 8(c)(1) of the Act, include the late fee per class required by § 2.6;

(3) If at least one fee is submitted for a multi-class registration, but the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. Additional fee(s) may be submitted if the requirements of § 2.164 are met. If the required fee(s) are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class;

(e)(1) Specify the goods or services for which the mark is in use in commerce, and/or the goods or services for which excusable nonuse is claimed under § 2.161(f)(2);

(2) If the affidavit or declaration covers less than all the goods or services, or less than all the classes in the registration, specify the goods or services being deleted from the registration;

(f)(1) State that the registered mark is in use in commerce on or in connection with the goods or services in the registration; or

(2) If the registered mark is not in use in commerce on or in connection with all the goods or services in the registration, set forth the date when use of the mark in commerce stopped and the approximate date when use is expected to resume; and recite facts to show that nonuse as to those goods or

services is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark. If the facts recited are found insufficient, further evidence or explanation may be submitted, if the requirements of § 2.164 are met;

(g) Include a specimen showing current use of the mark for each class of goods or services, unless excusable nonuse is claimed under § 2.161(f)(2). The specimen must:

(1) Show the mark as actually used on or in connection with the goods or in the sale or advertising of the services. A photocopy or other reproduction of the specimen showing the mark as actually used is acceptable. However, a photocopy that merely reproduces the registration certificate is not a proper specimen;

(2) Be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen exceeds these size requirements (a ''bulky specimen''), the Office will create a facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper;

(h) If the registrant is not domiciled in the United States, the registrant must list the name and address of a United States resident upon whom notices or process in proceedings affecting the registration may be served.

42. Revise § 2.162 to read as follows:

**§ 2.162 Notice to registrant.**

When a certificate of registration is originally issued, the Office includes a notice of the requirement for filing the affidavit or declaration of use or excusable nonuse under section 8 of the Act. However the affidavit or declaration must be filed within the time period required by section 8 of the Act even if this notice is not received.

43. Revise § 2.163 to read as follows:

**§ 2.163 Acknowledgment of receipt of affidavit or declaration.**

The Office will issue a notice as to whether an affidavit or declaration is acceptable, or the reasons for refusal.

(a) If the owner of the registration filed the affidavit or declaration within the time periods set forth in section 8 of the Act, deficiencies may be corrected if the requirements of § 2.164 are met.

(b) A response to the refusal must be filed within six months of the mailing date of the Office action, or before the end of the filing period set forth in section 8(a) or section 8(b) of the Act, whichever is later. If no response is filed within this time period, the registration will be cancelled.

44. Add § 2.164 to read as follows:

**§ 2.164 Correcting deficiencies in affidavit or declaration.**

(a) If the owner of the registration files an affidavit or declaration within the time periods set forth in section 8 of the Act, deficiencies may be corrected, as follows:

(1) *Correcting deficiencies in affidavits or declarations timely filed within the periods set forth in sections 8(a) and 8(b) of the Act.* If the owner timely files the affidavit or declaration within the relevant filing period set forth in section 8(a) or section 8(b) of the Act, deficiencies may be corrected before the end of this filing period without paying a deficiency surcharge. Deficiencies may be corrected after the end of this filing period with payment of the deficiency surcharge required by section 8(c)(2) of the Act and § 2.6.

(2) *Correcting deficiencies in affidavits or declarations filed during the grace period.* If the affidavit or declaration is filed during the six-month grace period provided by section 8(c)(1) of the Act, deficiencies may be corrected before the expiration of the grace period without paying a deficiency surcharge. Deficiencies may be corrected after the expiration of the grace period with payment of the deficiency surcharge required by section 8(c)(2) of the Act and § 2.6.

(b) If the affidavit or declaration is not filed within the time periods set forth in section 8 of the Act, or if it is filed within that period by someone other than the owner, the registration will be cancelled. These deficiencies cannot be cured.

45. Revise § 2.165 to read as follows:

**§ 2.165 Petition to Commissioner to review refusal.**

(a) A response to the examiner's initial refusal to accept an affidavit or declaration is required before filing a petition to the Commissioner, unless the examiner directs otherwise. See § 2.163(b) for the deadline for responding to an examiner's Office action.

(b) If the examiner maintains the refusal of the affidavit or declaration, a petition to the Commissioner to review the action may be filed. The petition must be filed within six months of the mailing date of the action maintaining the refusal, or the Office will cancel the registration and issue a notice of the cancellation.

(c) A decision by the Commissioner is necessary before filing an appeal or commencing a civil action in any court.

46. Revise § 2.166 to read as follows:

**§ 2.166 Affidavit of continued use or excusable nonuse combined with renewal application.**

An affidavit or declaration under section 8 of the Act and a renewal application under section 9 of the Act may be combined into a single document, provided that the document meets the requirements of both sections 8 and 9 of the Act.

47. Amend § 2.167 by revising paragraph (c) to read as follows:

**§ 2.167 Affidavit or declaration under section 15.**

* * * * *

(c) Recite the goods or services stated in the registration on or in connection with which the mark has been in continuous use in commerce for a period of five years after the date of registration or date of publication under section 12(c) of the Act, and is still in use in commerce;

* * * * *

48. Revise § 2.168 to read as follows:

**§ 2.168 Affidavit or declaration under section 15 combined with affidavit or declaration under section 8, or with renewal application.**

(a) The affidavit or declaration filed under section 15 of the Act may also be used as the affidavit or declaration required by section 8, if the affidavit or declaration meets the requirements of both sections 8 and 15.

(b) The affidavit or declaration filed under section 15 of the Act may be combined with an application for renewal of a registration under section 9 of the Act, if the requirements of both sections 9 and 15 are met.

49. Amend § 2.173 by revising the heading and paragraph (a) to read as follows:

**§ 2.173 Amendment of registration.**

(a) The registrant may apply to amend the registration or to disclaim part of the mark in the registration. A written request specifying the amendment or disclaimer must be submitted. The request must be signed by the registrant and verified or supported by a declaration under § 2.20, and accompanied by the required fee. If the amendment involves a change in the mark, a new specimen showing the mark as used on or in connection with the goods or services, and a new drawing of the amended mark, must be submitted. The certificate of registration or, if the certificate is lost or destroyed, a certified copy of the certificate, must also be submitted. The registration as amended must still contain registrable matter, and the mark as amended must be registrable as a whole. An amendment or disclaimer must not

materially alter the character of the mark.

* * * * *

50. Amend § 2.181 by revising paragraph (a)(1) to read as follows:

**§ 2.181 Term of original registrations and renewals.**

(a)(1) Subject to the provisions of section 8 of the Act requiring an affidavit or declaration of continued use or excusable nonuse, registrations issued or renewed under the Act, prior to November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for twenty years from their date of issue or expiration, and may be renewed for periods of ten years from the expiring period unless previously cancelled or surrendered.

* * * * *

51. Revise § 2.182 to read as follows:

**§ 2.182 Time for filing renewal application.**

An application for renewal must be filed within one year before the expiration date of the registration, or within the six-month grace period after the expiration date of the registration. If no renewal application is filed within this period, the registration will expire.

52. Revise § 2.183 to read as follows:

**§ 2.183 Requirements for a complete renewal application.**

A complete renewal application must include:

(a) A request for renewal of the registration, signed by the registrant or the registrant's representative;

(b) The fee required by § 2.6 for each class;

(c) The additional fee required by § 2.6 for each class if the renewal application is filed during the six-month grace period set forth in section 9(a) of the Act;

(d) If the registrant is not domiciled in the United States, the name and address of a United States resident on whom notices or process in proceedings affecting the registration may be served; and

(e) If the renewal application covers less than all the goods or services in the registration, a list of the particular goods or services to be renewed.

(f) If at least one fee is submitted for a multi-class registration, but the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. Additional fee(s) may be submitted if the requirements of § 2.185 are met. If the required fee(s) are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class.

53. Revise § 2.184 to read as follows:

**§ 2.184 Refusal of renewal.**

(a) If the renewal application is not acceptable, the Office will issue a notice stating the reason(s) for refusal.

(b) A response to the refusal of renewal must be filed within six months of the mailing date of the Office action, or before the expiration date of the registration, whichever is later, or the registration will expire.

(c) If the renewal application is not filed within the time periods set forth in section 9(a) of the Act, the registration will expire.

54. Add § 2.185 to read as follows:

**§ 2.185 Correcting deficiencies in renewal application.**

(a) If the renewal application is filed within the time periods set forth in section 9(a) of the Act, deficiencies may be corrected, as follows:

(1) *Correcting deficiencies in renewal applications filed within one year before the expiration date of the registration.* If the renewal application is filed within one year before the expiration date of the registration, deficiencies may be corrected before the expiration date of the registration without paying a deficiency surcharge. Deficiencies may be corrected after the expiration date of the registration with payment of the deficiency surcharge required by section 9(a) of the Act and § 2.6.

(2) *Correcting deficiencies in renewal applications filed during the grace period.* If the renewal application is filed during the six-month grace period, deficiencies may be corrected before the expiration of the grace period without paying a deficiency surcharge. Deficiencies may be corrected after the expiration of the grace period with payment of the deficiency surcharge required by section 9(a) of the Act and § 2.6.

(b) If the renewal application is not filed within the time periods set forth in section 9(a) of the Act, the registration will expire. This deficiency cannot be cured.

55. Add § 2.186 to read as follows:

**§ 2.186 Petition to Commissioner to review refusal of renewal.**

(a) A response to the examiner's initial refusal of the renewal application is required before filing a petition to the Commissioner, unless the examiner directs otherwise. See § 2.184(b) for the deadline for responding to an examiner's Office action.

(b) If the examiner maintains the refusal of the renewal application, a petition to the Commissioner to review the refusal may be filed. The petition must be filed within six months of the mailing date of the Office action maintaining the refusal, or the renewal application will be abandoned and the registration will expire.

(c) A decision by the Commissioner is necessary before filing an appeal or commencing a civil action in any court.

## PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

56. The authority citation for part 3 continues to read as follows:

**Authority:** 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

56a. Revise § 3.16 to read as follows:

**§ 3.16 Assignability of trademarks prior to filing of an allegation of use statement.**

Before an allegation of use under either 15 U.S.C. 1051(c) or 15 U.S.C. 1051(d) is filed, an applicant may only assign an application to register a mark under 15 U.S.C. 1051(b) to a successor to the applicant's business, or portion of the business to which the mark pertains, if that business is ongoing and existing.

57. Amend § 3.24 by revising the heading to read as follows:

**§ 3.24 Requirements for documents and cover sheets relating to patents and patent applications.**

* * * * *

58. Add § 3.25 to read as follows:

**§ 3.25 Recording requirements for trademark applications and registrations.**

(a) *Documents affecting title.* To record documents affecting title, a legible cover sheet (see § 3.31) and one of the following must be submitted:

(1) The original document;

(2) A copy of the document;

(3) A copy of an extract from the document evidencing the effect on title; or

(4) A statement signed by both the party conveying the interest and the party receiving the interest explaining how the conveyance affects title.

(b) *Name changes.* Only a legible cover sheet is required (See § 3.31).

(c) *All documents.* All documents submitted to the Office should be on white and non-shiny paper that is no larger than 8½ × 14 inches (21.6 × 33.1 cm.) with a one-inch (2.5 cm) margin on all sides. Only one side of each page should be used.

59. Revise § 3.28 to read as follows:

**§ 3.28 Requests for recording.**

Each document submitted to the Office for recording must include at least one cover sheet as specified in § 3.31 referring either to those patent applications and patents, or to those trademark applications and registrations, against which the document is to be recorded. If a document to be recorded includes interests in, or transactions involving, both patents and trademarks, separate patent and trademark cover sheets should be submitted. Only one set of documents and cover sheets to be recorded should be filed. If a document to be recorded is not accompanied by a completed cover sheet, the document and the incomplete cover sheet will be returned pursuant to § 3.51 for proper completion. The document and a completed cover sheet should be resubmitted.

60. Amend § 3.31 by revising paragraphs (a) and (b) and by adding paragraphs (d) and (e) to read as follows:

**§ 3.31 Cover sheet content.**

(a) Each patent or trademark cover sheet required by § 3.28 must contain:

(1) The name of the party conveying the interest;

(2) The name and address of the party receiving the interest;

(3) A description of the interest conveyed or transaction to be recorded;

(4) Identification of the interests involved:

(i) *For trademark assignments and trademark name changes:* Each trademark registration number and each trademark application number, if known, against which the Office is to record the document. If the trademark application number is not known, a copy of the application or a reproduction of the trademark must be submitted, along with an estimate of the date that the Office received the application; or

(ii) *For any other document affecting title to a trademark or patent application, registration or patent:* Each trademark or patent application number or each trademark registration number or patent against which the document is to be recorded;

(5) The name and address of the party to whom correspondence concerning the request to record the document should be mailed;

(6) The date the document was executed;

(7) An indication that the assignee of a trademark application or registration who is not domiciled in the United States has designated a domestic representative (see § 3.61); and

(8) The signature of the party submitting the document.

(b) A cover sheet should not refer to both patents and trademarks, since any information, including information about pending patent applications, submitted with a request for recordation of a document against a trademark application or trademark registration will become public record upon recordation.

* * * * *

(d) Each trademark cover sheet required by § 3.28 seeking to record a document against a trademark application or registration should include, in addition to the serial number or registration number of the trademark, identification of the trademark or a description of the trademark, against which the Office is to record the document.

(e) Each patent and trademark cover sheet required by § 3.28 should contain the number of applications, patents or registrations identified in the cover sheet and the total fee.

## PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT

61. The authority citation for part 6 continues to read as follows:

**Authority:** 15 U.S.C. 1112, 1123; 35 U.S.C. 6, unless otherwise noted.

62. Revise § 6.1 to read as follows:

**§ 6.1 International schedule of classes of goods and services.**

**Goods**

1. Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins; unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.

2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.

3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.

4. Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks.

5. Pharmaceutical, veterinary, and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

6. Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; nonelectric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.

7. Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs.

8. Hand tools and implements (hand-operated); cutlery; side arms; razors.

9. Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire extinguishing apparatus.

10. Surgical, medical, dental, and veterinary apparatus and instruments, artificial limbs, eyes, and teeth; orthopedic articles; suture materials.

11. Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air, or water.

13. Firearms; ammunition and projectiles; explosives; fireworks.

14. Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewelry, precious stones; horological and chronometric instruments.

15. Musical instruments.

16. Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other

classes); playing cards; printers' type; printing blocks.

17. Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.

18. Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.

19. Building materials (non-metallic); nonmetallic rigid pipes for building; asphalt, pitch and bitumen; nonmetallic transportable buildings; monuments, not of metal.

20. Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.

21. Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steel-wool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.

22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.

23. Yarns and threads, for textile use.

24. Textiles and textile goods, not included in other classes; beds and table covers.

25. Clothing, footwear, headgear.

26. Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.

27. Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).

28. Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.

29. Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats.

30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces (condiments); spices; ice.

31. Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals; malt.

32. Beers; mineral and aerated waters and other nonalcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.

33. Alcoholic beverages (except beers).

34. Tobacco; smokers' articles; matches.

**Services**

35. Advertising; business management; business administration; office functions.

36. Insurance; financial affairs; monetary affairs; real estate affairs.

37. Building construction; repair; installation services.

38. Telecommunications.

39. Transport; packaging and storage of goods; travel arrangement.

40. Treatment of materials.

41. Education; providing of training; entertainment; sporting and cultural activities.

42. Providing of food and drink; temporary accommodation; medical, hygienic and beauty care; veterinary and agricultural services; legal services; scientific and industrial research; computer programming; services that cannot be classified in other classes.

Dated: May 3, 1999.

**Q. Todd Dickinson,**

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

[FR Doc. 99–11471 Filed 5–10–99; 8:45 am]

BILLING CODE 3510–16–P

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## DEPARTMENT OF VETERANS AFFAIRS

## 38 CFR Part 4

**RIN 2900–AH43**

## Schedule for Rating Disabilities; Eye

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is proposing to amend that portion of its rating schedule that addresses the eye. The intended effect of this action is to ensure that this section of the Schedule for Rating Disabilities uses current medical terminology and provides unambiguous criteria for evaluating disabilities of the eye.

**DATES:** Comments must be received on or before July 12, 1999.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are in response to ''RIN 2900–AH43.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Caroll McBrine, M.D., Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC, 20420, (202) 273–7230.

**SUPPLEMENTARY INFORMATION:** As part of a comprehensive review of its rating schedule, VA published an advance notice of proposed rulemaking regarding impairments of the eye, ear and other sense organs in the **Federal Register** on May 2, 1991 (56 FR 20170). In response, we received a number of comments from private and VA physicians and from other VA employees. For the reasons discussed below, this document proposes to amend the portion of the rating schedule that addresses disabilities of the eye.

The comments received included suggestions that we delete several diagnostic codes, provide diagnostic codes for additional conditions, and change evaluation criteria for a number of conditions. We have considered these comments as explained below.

In addition to publishing an advance notice of proposed rulemaking, we also contracted with an outside consultant to recommend changes to ensure that the schedule uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review. The consultant convened a panel of non-VA specialists to review the portion of the rating schedule that addresses eye conditions in order to formulate recommendations. We are proposing to adopt many of the recommendations the contract consultants submitted. However, we do not propose to adopt recommendations that address areas, such as frequency of examinations, that are clearly beyond the scope of the contract or that deal with issues that affect the internal consistency of the rating schedule, such as percentage evaluations. Assignments of disability