maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Nicholson by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until June 7, 2007.

VI. A copy of this Order shall be delivered to Nicholson. This Order shall be published in the **Federal Register.**

Dated: March 23, 1999.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 99–7880 Filed 3–30–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032399B]

Taking and Importing of Marine Mammals; International Dolphin Conservation Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of initial research results from the International Dolphin Conservation Program survey of dolphins in the eastern tropical Pacific Ocean (ETP).

ADDRESSES: A copy of the research results may be found on the internet at http://swfsc.ucsd.edu/IDCPA/IDCPAfront.html. Copies may also be obtained from the Marine Mammal Division, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, P.O. Box 271, La Jolla, California 92038–0271 (fax 619–546–7003).

SUPPLEMENTARY INFORMATION: NMFS has conducted scientific research required by the Marine Mammal Protection Act, as amended by the International Dolphin Conservation Program Act ((IDCPA) 16 U.S.C 1414(a)). Under the IDCPA, NMFS is required to study the effects of intentional encirclement on dolphins incidentally taken in the tuna purse seine fishery in the ETP, and to conduct population abundance surveys and stress studies. The IDCPA requires the Secretary of Commerce to make an initial finding regarding whether intentional encirclement is having a significant adverse impact on any depleted dolphin stock in the ETP (16 U.S.C. 1385(g)). NMFS' report on the study has been delayed by 30 days while completing an additional independent peer review requested by Congress. NMFS expects to publish a notification of the Secretary's initial finding in early May.

Dated: March 24, 1999.

Linda A. Chaves,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–7887 Filed 3–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 990212048–9048–01]

Guidelines for Reexamination of Cases in View of In re Portola Packaging, Inc., 110 F.3d 786, 42 USPQ2d 1295 (Fed. Cir. 1997)

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice

SUMMARY: The Patent and Trademark Office (PTO) is publishing the final version of guidelines to be used by Office personnel in their review of requests for reexaminations and ongoing reexaminations for compliance with the decision in *In re Portola Packaging, Inc.*, 110 F.3d 786, 42 USPQ2d 1295 (Fed. Cir. 1997). Because these guidelines govern internal practices, they are exempt from notice and comment under 5 U.S.C. 553(b)(A).

DATES: The guidelines are effective March 31, 1999.

FOR FURTHER INFORMATION CONTACT: John M. Whealan by telephone at (703) 305–9035; by facsimile at (703) 305–9373; by mail addressed to Box 8, Commissioner of Patents and Trademarks, Washington, D.C. 20231; or by electronic mail at ''john.whealan@uspto.gov''.

SUPPLEMENTARY INFORMATION:

I. Discussion of Public Comments

Comments were received by the PTO from eight individuals and one bar association in response to the Request for Comments on Interim Guidelines for Reexamination of Cases in View of *In re Portola Packaging, Inc.*, 110 F.3d 786, 42 USPQ2d 1295 (Fed. Cir. 1997), published June 15, 1998 (63 FR 32646). In general, six of the eight individual comments were critical of the guidelines; one individual comment was partially supportive of the guidelines and one suggested a legislative change; the comments from the bar association were in complete support of the guidelines. All of the comments have been carefully considered.

A. Below is a listing of comments along with a corresponding Office response explaining why each has not been adopted:

(1) Comment: Most of the critical comments suggest the Office is misinterpreting the ''holding'' of *Portola Packaging.* These comments believe *Portola Packaging* held that (i) the Office may not initiate a reexamination proceeding based solely on prior art previously cited during prosecution of the application which matured into the patent, regardless of whether that art was discussed, and (ii) no rejection can be made during a subsequent reexamination based solely on prior art cited during prosecution of the application which matured into the patent, even if that prior art was not previously discussed. Response: The Office views these positions as dicta and not the ''holding'' of *Portola Packaging.*

The Federal Circuit recently explained the difference between the holding of a case and dicta. See In re McGrew, 120 F.3d 1236, 1238–39, 43 USPQ2d 1632, 1635 (Fed. Cir. 1997). The Court explained that dicta consists of the statements in an opinion ''upon a point or points not necessary to the decision of the case.'' *Id.* at 1238, 43 USPQ2d at 1635. The Court further explained that since ''dictum is not authoritative,'' it need not be followed. *Id.*

The Office considers the portions of the *Portola Packaging* opinion relied on by the critical commenters as dicta and not the holding of the case. In *Portola Packaging*, the prior art relied upon in the reexamination (that was found by the Court to be improperly used) was not only cited, but it was also discussed and applied to reject claims during prosecution of the application which matured into the patent. Thus, *Portola Packaging* holds that a rejection in a reexamination proceeding may not be based solely on prior art that was previously applied to reject claims during prosecution of the application which matured into the patent. *Portola Packaging* does not, however, hold (as suggested by the commenters) that prior art in the record of the application that