

State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use

voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(h), of the Instruction, from further environmental documentation. As a special local regulation issued in conjunction with a marine parade, this rule satisfies the requirements of paragraph (34)(h). Under figure 2-1, paragraph (34)(h), of the instruction, an "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 100

Regattas and marine parades.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 9 a.m. on January 29, 2005, until 2:30 p.m. on February 5, 2005, in § 100.734, suspend paragraphs (a), (b) and (c), and add new paragraphs (d) and (e) to read as follows:

§ 100.734 Annual Gasparilla Marine Parade; Hillsborough Bay, Tampa, FL.

* * * * *

(d) *Regulated area.* A regulated area is established consisting of all waters of Hillsborough Bay and its tributaries

north of a line drawn along latitude 27° 51' 18" N. The regulated area includes the following in their entirety: Hillsborough Cut "D" Channel, Seddon Channel and the Hillsborough River south of the John F. Kennedy Bridge. Coordinates Reference Datum, NAD 1983.

(e) *Special Local Regulations.* (1) Entry into the regulated area is prohibited to all commercial marine traffic from 9 a.m. to 2:30 p.m. EST on January 29, 2005.

(2) The regulated area is an idle speed, "no wake" zone.

(3) All vessels within the regulated area shall stay clear of and give way to all vessels in parade formation in the Gasparilla Marine Parade.

(4) When within the marked channels of the parade route, vessels participating in the Gasparilla Marine Parade may not exceed the minimum speed necessary to maintain steerage.

(5) Jet skis and vessels without mechanical propulsion are prohibited from the parade route.

(6) Northbound vessels in excess of 80 feet in length without mooring arrangements made prior to January 29, 2005, are prohibited from entering Seddon Channel unless the vessel is officially entered in the Gasparilla Marine Parade. All northbound vessels in excess of 80 feet without prior mooring arrangements and not officially entered in the Gasparilla Marine Parade, must use the alternate route through Sparkman Channel.

W.E. Justice,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 41

[Docket No. 2003-P-026]

RIN 0651-AB54

Changes To Implement the Patent Fee Related Provisions of the Consolidated Appropriations Act, 2005

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Consolidated Appropriations Act, 2005 (Consolidated Appropriations Act), revises patent fees in general, and provides for a search fee and examination fee that are separate

from the filing fee, during fiscal years 2005 and 2006. This final rule revises the patent fees set forth in the rules of practice to conform them to the patent fees set forth in the Consolidated Appropriations Act.

DATES: *Effective Date:* December 8, 2004.

Applicability Date: The changes in this final rule apply to all patents (including patents in reexamination proceedings), whenever granted, and to all patent applications pending on or after December 8, 2004.

FOR FURTHER INFORMATION CONTACT:

Robert W. Bahr, Senior Patent Attorney, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272-8800, by mail addressed to: Box Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450, or by facsimile to (571) 273-7735, marked to the attention of Robert W. Bahr.

SUPPLEMENTARY INFORMATION: The Consolidated Appropriations Act (section 801 of Division B) provides that 35 U.S.C. 41(a), (b), and (d) shall be administered in a manner that revises patent application fees (35 U.S.C. 41(a)) and patent maintenance fees (35 U.S.C. 41(b)), and provides for a separate filing fee (35 U.S.C. 41(a)), search fee (35 U.S.C. 41(d)(1)), and examination fee (35 U.S.C. 41(a)(3)) during fiscal years 2005 and 2006. *See* Pub. L. 108-447, 118 Stat. 2809 (2004). This final rule revises the patent fees set forth in the rules of practice in title 37 of the Code of Federal Regulations (CFR) to conform them to the patent fees set forth in the Consolidated Appropriations Act. The citations to 35 U.S.C. 41 in this final rule are citations to 35 U.S.C. 41 as it is being administered during fiscal years 2005 and 2006 pursuant to the Consolidated Appropriations Act.

The Consolidated Appropriations Act also provides that the provisions of 35 U.S.C. 111(a) for payment of the fee for filing the application apply to the payment of the examination fee (35 U.S.C. 41(a)(3)) and search fee (35 U.S.C. 41(d)(1)) in an application filed under 35 U.S.C. 111(a), and that the provisions of 35 U.S.C. 371(d) for the payment of the national fee apply to the payment of the examination fee (35 U.S.C. 41(a)(3)) and search fee (35 U.S.C. 41(d)(1)) in an international application filed under the Patent Cooperation Treaty (PCT) and entering the national stage under 35 U.S.C. 371. *See* 35 U.S.C. 41(a)(3) and 41(d)(1)(C). Thus, the examination fee and search fee are due on filing in an application filed under 35 U.S.C. 111(a) or on commencement of the national stage in a PCT international application, but

may be paid at a later time if paid within such period and under such conditions (including payment of a surcharge) as may be prescribed by the Director. *See* H. R. Rep. 108-241, at 16 (2003) (H. R. Rep. 108-241 contains an analysis and discussion of an identical provision in H.R. 1561, 108th Cong. (2004)).

The Consolidated Appropriations Act also provides that the small entity reduction set forth in 35 U.S.C. 41(h)(1) also applies to the search fee provided for in 35 U.S.C. 41(d)(1) (35 U.S.C. 41(h)(1)), and provides that the filing fee charged under 35 U.S.C. 41(a)(1)(A) shall be reduced by 75 percent with respect to its application to any small entity “if the application is filed by electronic means as prescribed by the Director” (35 U.S.C. 41(h)(3)). Since 35 U.S.C. 41(h)(3) applies only to the filing fee charged under 35 U.S.C. 41(a)(1)(A) (the filing fee for a nonprovisional original utility application), the 75 percent fee reduction set forth in 35 U.S.C. 41(h)(3) does not apply to design or plant applications, reissue applications, or provisional applications.

The Consolidated Appropriations Act also provides that the Office may, by regulation, provide for a refund of: (1) Any part of the excess claims fee specified in 35 U.S.C. 41(a)(2) for any claim that is canceled before an examination on the merits has been made of the application under 35 U.S.C. 131; (2) any part of the search fee for any applicant who files a written declaration of express abandonment as prescribed by the Office before an examination has been made of the application under 35 U.S.C. 131; and (3) any part of the search fee for any applicant who provides a search report that meets the conditions prescribed by the Office. This final rule does not contain changes to the rules of practice to implement the provisions for a refund of any part of the excess claims fee specified in 35 U.S.C. 41(a)(2) for any claim that is canceled before an examination on the merits has been made of the application under 35 U.S.C. 131, and any part of the search fee for any applicant who files a written declaration of express abandonment as prescribed by the Office before an examination has been made of the application under 35 U.S.C. 131.

The revised patent fees specified in 35 U.S.C. 41 apply to all patents, whenever granted, and to all applications pending on or filed after December 8, 2004, except as follows: The provisions of 35 U.S.C. 41(a)(1) (filing fee and application size fee), 35 U.S.C. 41(a)(3) (examination fee), and 35 U.S.C.

41(d)(1) (search fee) apply only to applications for patent filed under 35 U.S.C. 111 on or after December 8, 2004, and to international applications entering the national stage under 35 U.S.C. 371 for which the basic national fee specified in 35 U.S.C. 41 was not paid before December 8, 2004. In addition, the provisions of 35 U.S.C. 41(a)(2) (excess claims fee) apply only as to those claims in independent form and those claims (whether independent or dependent) that, after taking into account the claims that have been canceled, are in excess of the number of claims in independent form and claims (whether independent or dependent), respectively, for which the excess claims fee specified in 35 U.S.C. 41 was paid before December 8, 2004.

The applicable fee amount is the fee amount in effect on the day the fee is paid (in full). The day a fee is paid is the date of receipt of the fee payment in the Office under § 1.6, or the date reflected on a proper certificate of mailing or transmission on the fee payment, where such a certificate is authorized under § 1.8. Use of a certificate of mailing or transmission is not authorized for items that are specifically excluded from the provisions of § 1.8: *e.g.*, the filing of a national or international application for a patent. *See* § 1.8(a)(2). The date of receipt under 37 CFR 1.6 of patent-related correspondence delivered by the “Express Mail Post Office to Addressee” service of the United States Postal Service (USPS) is the date of deposit of the correspondence with the USPS. *See* §§ 1.6(a)(2) and 1.10(a)(1). The date of deposit with the USPS is shown by the “date-in” on the “Express Mail” mailing label or other official USPS notation. *See* § 1.10(a)(2).

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Parts 1 and 41, are amended as follows:

Section 1.16: Section 1.16 is amended to set forth the application filing, excess claims, search, examination, and application size fees as specified in 35 U.S.C. 41(a) and (d)(1) as amended by the Consolidated Appropriations Act.

Sections 1.16(a) through (e) set forth the basic filing fees under the Consolidated Appropriations Act for applications filed under 35 U.S.C. 111 on or after December 8, 2004: (1) The basic filing fee for an original nonprovisional utility application is \$300.00 (\$150.00 for a small entity, and \$75.00 for a small entity if the application is submitted in compliance with the Office electronic filing system); (2) the basic filing fee for an original

design application is \$200.00 (\$100.00 for a small entity); (3) the basic filing fee for an original nonprovisional plant application is \$200.00 (\$100.00 for a small entity); (4) the basic filing fee for a provisional application is \$200.00 (\$100.00 for a small entity); and (5) the basic filing fee for a reissue application is \$300.00 (\$150.00 for a small entity). See 35 U.S.C. 41(a)(1)(A) through (E).

The Consolidated Appropriations Act (Section 803(b)(1)(B)(i) of Division B) provides that the basic filing fees specified in 35 U.S.C. 41(a)(1) (except for the filing fee specified in 35 U.S.C. 41(a)(1)(D) for a provisional application) apply only to applications filed on or after December 8, 2004. Therefore, § 1.16 also sets forth the basic filing fee for applications filed under 35 U.S.C. 111 before December 8, 2004: (1) The basic filing fee for an original nonprovisional utility application and for a reissue application is \$790.00 (\$395.00 for a small entity); (2) the basic filing fee for an original design application is \$350.00 (\$175.00 for a small entity); and (3) the basic filing fee for an original nonprovisional plant application is \$550.00 (\$275.00 for a small entity). See *Revision of Patent Fees for Fiscal Year 2005*, 69 FR 52604 (Aug. 27, 2004) (final rule), and *Certain Fees to be Adjusted*, 1285 Off. Gaz. Pat. Office 185 (Aug. 31, 2004) (notice). These basic filing fees apply to applications filed before December 8, 2004, even if the basic filing fee is not paid until on or after December 8, 2004. The Consolidated Appropriations Act (Section 803(b)(1)(B)(ii) of Division B) also provides that the basic filing fee for a provisional application applies to all provisional applications filed before, on, or after December 8, 2004, in which the filing fee was not paid before December 8, 2004.

Section 1.16(f) sets forth the late filing surcharge for a nonprovisional application, and § 1.16(g) sets forth the late filing surcharge for a provisional application (formerly in §§ 1.16(e) and (l), respectively). See also §§ 1.53(f) and (g), respectively.

Section 1.16(h) sets forth the excess claims fee for each independent claim in excess of three; namely, \$200 (\$100 for a small entity) for each claim in independent form in excess of three. See 35 U.S.C. 41(a)(2)(A).

Section 1.16(i) sets forth the excess claims fee for each claim (whether dependent or independent) in excess of twenty; namely, \$50 (\$25 for a small entity) for each claim (whether dependent or independent) in excess of twenty. See 35 U.S.C. 41(a)(2)(B).

The excess claims fees specified in § 1.16 apply to applications filed before

December 8, 2004, and to applications pending on or after December 8, 2004. The Consolidated Appropriations Act (Section 803(b)(1)(C) of Division B) provides that the excess claims fees specified in 35 U.S.C. 41(a)(2) shall apply only as to those claims (independent or dependent) that, after taking into account any claims that have been canceled, are in excess of the number of claims for which the excess claims fee specified in 35 U.S.C. 41 was paid before December 8, 2004. Thus, the Office will charge the excess claims fees specified in § 1.16(h) and (i) if an applicant in an application filed before and pending on or after December 8, 2004, adds a claim (independent or total) in excess of the number of claims (independent or total) for which the excess claims fee was previously paid (under the current or a previous fee schedule). Specifically, the excess claims fees specified in § 1.16(h) and (i) apply to any excess claims fee paid on or after December 8, 2004, regardless of the filing date of the application and regardless of the date on which the claim necessitating the excess claims fee payment was added to the application. For example, in an application (non-small entity) that contains six independent claims and thirty total claims for which the excess claims fee specified in § 1.16 was previously paid: (1) No excess claims fee is due if the applicant cancels ten claims, two of which are independent, and adds ten claims, two of which are independent; (2) the excess claims fee for a seventh independent claim (\$200.00) is due if the applicant cancels ten claims, two of which are independent, and adds ten claims, three of which are independent; (3) the excess claims fee for a thirty-first claim (\$50.00) is due if the applicant cancels ten claims, two of which are independent, and adds eleven claims, two of which are independent; and (4) the excess claims fees for a seventh independent claim (\$200.00) and a thirty-first claim (\$50.00) are due if the applicant cancels ten claims, two of which are independent, and adds eleven claims, three of which are independent.

The excess claims fees specified in § 1.16(h) and (i) also apply to all reissue applications pending on or after December 8, 2004. Under 35 U.S.C. 41(a)(2) as amended by the Consolidated Appropriations Act, the claims in the original patent are not taken into account in determining the excess claims fee for a reissue application. Under "former" 35 U.S.C. 41, excess claims fees were required in reissue applications for each claim in independent form in excess of the

number of independent claims of the original patent, and for each claim (whether independent or dependent) in excess of twenty and also in excess of the number of claims of the original patent. Thus (in addition to excess claims under "former" 35 U.S.C. 41 for which the excess claims fee was not paid before December 8, 2004), the excess claims fees specified in § 1.16(h) and (i) are required for each independent claim in excess of three that is presented in a reissue application on or after December 8, 2004, and for each claim (whether independent or dependent) in excess of twenty that is presented in a reissue application on or after December 8, 2004.

Section 1.16(j) sets forth the fee for an application that contains a multiple dependent claim (formerly in § 1.16(d)). See 35 U.S.C. 41(a)(2)(C).

Sections 1.16(k), (l), (m), and (n) set forth the search fees as provided for in the Consolidated Appropriations Act (Section 803(c)(1) of Division B) for applications filed under 35 U.S.C. 111(a) on or after December 8, 2004. The Consolidated Appropriations Act provides for the following search fees during fiscal years 2005 and 2006: (1) \$500.00 for the search of each application for an original patent, except for design, plant, provisional, or international application; (2) \$100.00 for the search of each application for an original design patent; (3) \$300.00 for the search of each application for an original plant patent; and (4) \$500.00 for the search of each application for the reissue of a patent. These search fee amounts supersede the search fee setting provisions of 35 U.S.C. 41(d)(1)(A) and (B) (which authorize the Office to set a cost-recovery based search fee, with a number of limitations), but do not supersede provisions for the payment of search fees in 35 U.S.C. 41(d)(1)(C), the refund authorization provisions in 35 U.S.C. 41(d)(1)(D), and the small entity reduction provisions in 35 U.S.C. 41(h)(1).

Sections 1.16(o), (p), (q), and (r) set forth the examination fees specified in 35 U.S.C. 41(a)(3) for applications filed under 35 U.S.C. 111(a) on or after December 8, 2004: (1) The examination fee for each application for an original patent, except for design, plant, or provisional applications, is \$200.00 (\$100.00 for a small entity); (2) the examination fee for each application for an original design patent is \$130.00 (\$65.00 for a small entity); (3) the examination fee for each application for an original plant patent is \$160.00 (\$80.00 for a small entity); and (4) the examination fee for each application for

the reissue of a patent is \$600.00 (\$300.00 for a small entity).

Section 1.16(s) sets forth the fee for any application (including any provisional applications and any reissue application) filed under 35 U.S.C. 111 on or after December 8, 2004, the specification and drawings of which, excluding any sequence listing or computer program listing filed in an electronic medium as prescribed by the Director (*see* § 1.52(f)), exceed 100 sheets of paper (the "application size fee"). The application size fee set forth in § 1.16(s) is \$250.00 (\$125.00 for a small entity) for each additional 50 sheets or fraction thereof. *See* 35 U.S.C. 41(a)(1)(G).

The provision in 35 U.S.C. 41(a)(1)(G) for the Office to prescribe the paper size equivalent of an application filed in whole or in part in an electronic medium for purposes of the fee specified in 35 U.S.C. 41(a)(1)(G) (§ 1.16(s)) will be implemented in a separate rule making.

In situations in which a payment submitted for the fees due on filing in a nonprovisional application filed under 35 U.S.C. 111(a) is insufficient and the applicant has not specified the fees to which the payment is to be applied, the Office will apply the payment in the following order until the payment is expended: (1st) the basic filing fee (§ 1.16(a), (b), (c), or (e)); (2nd) the application size fee (§ 1.16(s)); (3rd) the late filing surcharge (§ 1.16(f)); (4th) the processing fee for an application filed in a language other than English (§ 1.17(i)); (5th) the search fee (§ 1.16(k), (l), (m), or (n)); (6th) the examination fee (§ 1.16(o), (p), (q), or (r)); and (7th) the excess claims fee (§§ 1.16(h), (i), and (j)). In situations in which a payment submitted for the fees due on filing in a provisional application filed under 35 U.S.C. 111(b) is insufficient and the applicant has not specified the fees to which the payment is to be applied, the Office will apply the payment in the following order until the payment is expended: (1st) the basic filing fee (§ 1.16(d)); (2nd) the application size fee (§ 1.16(s)); and (3rd) the late filing surcharge (§ 1.16(g)).

Since the basic filing fee, search fee, and examination fee under the new patent fee structure are often referred to as the "filing fee," the Office will treat a deposit account authorization to charge "the filing fee" as an authorization to charge the applicable fees under 1.16 (the basic filing fee, search fee, examination fee, any excess claims fee, and any application size fee) to the deposit account, and will treat a deposit account authorization to charge "the basic filing fee" as an authorization

to charge the applicable basic filing fee, search fee, and examination fee to the deposit account. Any deposit account authorization to charge the filing fee but not the search fee or examination fee must specifically limit the authorization by reference to one or more of paragraphs (a) through (e) of § 1.16.

The filing and processing fees for international applications filed under 35 U.S.C. 363 are covered in §§ 1.445 and 1.482, and the national fees (including search and examination fees) for applications entering the national stage under 35 U.S.C. 371 from international applications are covered in § 1.492.

Section 1.17: Section 1.17 is amended to set forth the application processing fees as specified in 35 U.S.C. 41(a) as amended by the Consolidated Appropriations Act.

Section 1.17(a) sets forth the extension fees for a petition for an extension of time under 35 U.S.C. 41(a)(8) and § 1.136(a): (1) the petition fee for reply within the first month is \$120.00 (\$60.00 for a small entity); (2) the petition fee for reply within the second month is \$450.00 (\$225.00 for a small entity); (3) the petition fee for reply within the third month is \$1,020.00 (\$510.00 for a small entity); (4) the petition fee for reply within the fourth month is \$1,590.00 (\$795.00 for a small entity); and (5) the petition fee for reply within the fifth month is \$2,160.00 (\$1,080.00 for a small entity). *See* 35 U.S.C. 41(a)(8).

Sections 1.17(l) and (m) set forth petition fees for the revival of abandoned applications, the delayed payment of issue fees, or the delayed response by the patent owner in reexamination proceedings: (1) the fee under the unavoidable standard provided for in § 1.137(a) is \$500.00 (\$250.00 for a small entity) (§ 1.17(l)); and (2) the fee under the unintentional standard provided for in § 1.137(b) is \$1,500.00 (\$750 for a small entity) (§ 1.17(m)). *See* 35 U.S.C. 41(a)(7).

The Consolidated Appropriations Act does not revise the fees for: (1) A request for continued examination under 35 U.S.C. 132(b) and § 1.114; (2) a submission after final rejection under § 1.129(a); or (3) each additional invention to be examined under § 1.129(b). Therefore: (1) the fee for a request for continued examination under 35 U.S.C. 132(b) and § 1.114 remains at \$790.00 (\$395.00 for a small entity); (2) the fee for a submission after final rejection under § 1.129(a) remains at \$790.00 (\$395.00 for a small entity); and (3) the fee for each additional invention to be examined under § 1.129(b) remains at \$790.00 (\$395.00 for a small entity). *See Revision of*

Patent Fees for Fiscal Year 2004, 69 FR at 52604, and *Certain Fees to be Adjusted*, 1285 *Off. Gaz. Pat. Office* at 186.

Section 1.18: Section 1.18 is amended to set forth the patent issue fees as specified in 35 U.S.C. 41(a)(4) as amended by the Consolidated Appropriations Act: (1) The fee for issuing an original utility patent or for issuing a reissue patent is \$1,400.00 (\$700.00 for a small entity); (2) the fee for issuing an original design patent is \$800.00 (\$400.00 for a small entity); and (3) the fee for issuing an original plant patent is \$1,100.00 (\$550.00). *See* 35 U.S.C. 41(a)(4).

Section 1.20: Section 1.20 is amended to provide that excess claims fees as specified in 35 U.S.C. 41(a)(2) as amended by the Consolidated Appropriations Act are applicable to excess claims proposed to be added to a patent by their presentation during a reexamination proceeding. Under "former" 35 U.S.C. 41, excess claims fees were included as part of the "application" filing fee under 35 U.S.C. 41(a)(1), and thus did not apply during reexamination proceedings. The Consolidated Appropriations Act does not include the excess claims as part of the "application" filing fee under 35 U.S.C. 41(a)(1), but separately provides for excess claims fees in 35 U.S.C. 41(a)(2) (as being in addition to the filing fee in 35 U.S.C. 41(a)(1)). 35 U.S.C. 41(a)(2) provides that an excess claims fee is due "on filing or on presentation at any other time" (*e.g.*, during a reexamination proceeding) of an independent claim in excess of three or of a claim (whether independent or dependent) in excess of twenty. *See* H. R. Rep. 108-241, at 15 ("[t]he excess claims fees required by [35 U.S.C.] 41(a)(2) are due at the time of presentation of the claim for which payment is required (whether on filing or at a later time) in the application or reexamination proceeding").

Section 1.20(c)(3) specifically requires \$200 (\$100 for a small entity) for each claim in independent form in excess of three that is also in excess of the number of claims in independent form in the patent under reexamination. Section 1.20(c)(4) specifically requires \$50 (\$25 for a small entity) for each claim (whether dependent or independent) in excess of twenty that is also in excess of the number of claims in the patent under reexamination. A claim that has been disclaimed under 35 U.S.C. 253 and § 1.321(a) as of the date of filing of the request for reexamination is not considered to be a claim in the patent under reexamination for purposes of excess claims fee

calculations. Section 1.20(c)(5) provides that if the excess claims fees required by § 1.20(c)(3) and (c)(4) are not paid with the request for reexamination or on later presentation of the claims for which the excess claims fees are due, the fees required by § 1.20(c)(3) and (c)(4) must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency.

The excess claims fees specified in § 1.20(c) apply to all patents, whenever granted, for each independent claim in excess of three and also in excess of the number of independent claims in the patent or for each claim (whether independent or dependent) in excess of twenty and also in excess of the number of claims in the patent that is presented in a reexamination proceeding on or after December 8, 2004 (since no excess claims fee was due under 35 U.S.C. 41 for any claim presented during a reexamination proceeding before December 8, 2004). For example, in a patent (non-small entity) that contains (including as a result of a previous reexamination proceeding) six independent claims and thirty total claims: (1) No excess claims fee is due if the patent owner cancels ten claims, two of which are independent, and adds ten claims, two of which are independent; (2) the excess claims fee for a seventh independent claim (\$200.00) is due if the patent owner cancels ten claims, two of which are independent, and adds ten claims, three of which are independent; (3) the excess claims fee for a thirty-first claim (\$50.00) is due if the patent owner cancels ten claims, two of which are independent, and adds eleven claims, two of which are independent; and (4) the excess claims fees for a seventh independent claim (\$200.00) and a thirty-first claim (\$50.00) are due if the patent owner cancels ten claims, two of which are independent, and adds eleven claims, three of which are independent.

Section 1.20(d) sets forth the fee for filing a disclaimer under 35 U.S.C. 253 and § 1.321 in a patent application or patent: \$130.00 (\$65 for a small entity). See 35 U.S.C. 41(a)(5).

Sections 1.20(e), (f), and (g) are amended to set forth the patent maintenance fees as specified in 35 U.S.C. 41(b) as amended by the Consolidated Appropriations Act: (1) the first maintenance fee due at three years and six months after grant is \$900.00 (\$450.00 for a small entity); (2) the second maintenance fee due at seven years and six months after grant is \$2,300.00 (\$1,150.00 for a small entity); and (3) the third maintenance fee due at eleven years and six months

after grant is \$3,800.00 (\$1,900.00 for a small entity). See 35 U.S.C. 41(b).

Section 1.27: Section 1.27(b) is amended to implement the provision of 35 U.S.C. 41(h)(3), which provides that the fee charged under 35 U.S.C. 41(a)(1)(A) shall be reduced by 75 percent with respect to its application to any small entity "if the application is filed by electronic means as prescribed by the Director." See 35 U.S.C. 41(h)(3). Since 35 U.S.C. 41(h)(3) applies only to the filing fee charged under 35 U.S.C. 41(a)(1)(A) (the filing fee for a nonprovisional original utility application under 35 U.S.C. 111(a)), its 75 percent fee reduction does not apply to design or plant applications, reissue applications, or provisional applications. In any event, the Office electronic filing system does not currently provide for design or plant applications, or for international applications filed under the PCT which are entering the national stage under 35 U.S.C. 371.

Section 1.27(b)(1) contains the preexisting provisions of § 1.27(b). Section 1.27(b)(2) provides that submission of an original utility application in compliance with the Office electronic filing system by an applicant who has properly asserted entitlement to small entity status pursuant to § 1.27(c) in the particular original utility application allows the payment of a reduced filing fee pursuant to 35 U.S.C. 41(h)(3) (currently \$75.00).

Section 1.27(c) is amended to revise its reference to §§ 1.16 and 1.492 to reflect the corresponding changes to §§ 1.16 and 1.492.

Section 1.33: Section 1.33(c) is amended to re-insert text that was inadvertently deleted in the final rule *Changes to Representation of Others Before the United States Patent and Trademark Office*, 69 FR 35427 (June 24, 2004).

Section 1.51: Section 1.51(b)(4) is amended to indicate that a complete application under §§ 1.53(b) or 1.53(d) (nonprovisional applications filed under 35 U.S.C. 111(a)) includes the prescribed filing fee, search fee, examination fee, and application size fee. Section 1.51(c)(4) is amended to indicate that a complete application under § 1.53(c) (provisional applications filed under 35 U.S.C. 111(b)) includes the prescribed filing fee and application size fee.

Section 1.52: Section 1.52(f)(1) is added to provide that any sequence listing in an electronic medium in compliance with §§ 1.52(e) and 1.821(c) or (e), and any computer program listing filed in an electronic medium in compliance with §§ 1.52(e) and 1.96,

will be excluded when determining the application size fee required by § 1.16(s) or § 1.492(j). See 35 U.S.C. 41(a)(1)(G) (which provides that a sequence listing or a computer program listing is excluded if filed in an electronic medium as prescribed by the Director).

Section 1.52(f)(2) is added to provide that the paper size equivalent of the specification and drawings of an application submitted via the Office electronic filing system will be considered to be the number of sheets of paper present in the specification and drawings of the application when entered into the Office file wrapper (currently in the Office image file wrapper system) after being rendered by the Office electronic filing system for purposes of computing the application size fee required by § 1.16(s). See 35 U.S.C. 41(a)(1)(G) (which provides that the Director shall prescribe the paper size equivalent of an application filed in an electronic medium). Section 1.52(f)(2) further provides that any sequence listing in compliance with § 1.821(c) or (e), and any computer program listing in compliance with § 1.96, submitted via the Office electronic filing system will be excluded when determining the application size fee required by § 1.16(s) if the listing is submitted in American Standard Code for Information Interchange (ASCII) text as part of an associated file of the application. That is, for applications filed via the Office electronic filing system, a sequence listing or a computer program listing is "filed in an electronic medium as prescribed by the Director" for purposes of 35 U.S.C. 41(a)(1)(G) only if the listing is submitted in ASCII text as part of an associated file of the application. Thus, for example, sequence listings or computer program listings submitted via the Office electronic filing system in Portable Document Format (PDF) as part of the specification or as Tagg(ed) Image File Format (TIFF) drawing files would not be excluded when determining the application size fee required by § 1.16(s) or § 1.492(j).

Section 1.53: Sections 1.53(c), (f) and (g) are amended to revise their references to § 1.16 to reflect the corresponding changes to § 1.16.

Section 1.53(f) is further amended to provide for any application under § 1.53(b), or any continued prosecution application (CPA) under § 1.53(d) (for design applications), that does not also include the search fee and the examination fee. Section 1.53(f) specifically provides that if an application under § 1.53(b) or a CPA under § 1.53(d) does not include the search fee and the examination fee: (1)

Applicant will be notified and given a period of time within which to pay the search fee and examination fee to avoid abandonment if applicant has provided a correspondence address (§ 1.33(a)); and (2) applicant has two months from the filing date of the application within which to pay the search fee and examination fee to avoid abandonment if applicant has not provided a correspondence address.

Section 1.53(f) is also amended to include the provisions formerly in § 1.16(m) that if the excess claims fees required by §§ 1.16(h) and (i) and multiple dependent claim fee required by § 1.16(j) are not paid on filing or on later presentation of the claims for which the excess claims or multiple dependent claim fees are due, the fees required by §§ 1.16(h), (i), and (j) must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

Section 1.53(f) is also amended to provide that if the application size fee required by § 1.16(s) (if any) is not paid on filing or on later presentation of the amendment necessitating a fee or additional fee under § 1.16(s), the fee required by § 1.16(s) must be paid prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment. The submission of an amendment in reply to any Office action or notice which necessitates an application size fee or additional application size fee under § 1.16(s) and which does not also include the requisite application size fee under § 1.16(s) is a reply having an omission under § 1.703(c)(7), which will result in a reduction of any patent term adjustment by the number of days (if any) beginning on the day after the date the reply lacking the requisite application size fee under § 1.16(s) was filed and ending no earlier than the date that the requisite application size fee under § 1.16(s) was filed. *See* § 1.703(c)(7).

Section 1.53(g) is also amended to provide that if the application size fee required by § 1.16(s) (if any) is not paid on filing, the fee required by § 1.16(s) must be paid prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

Section 1.69: Section 1.69 is amended to correct typographical errors.

Section 1.75: Section 1.75(c) is amended to revise its reference to § 1.16 to reflect the corresponding changes to § 1.16.

Section 1.78: Section 1.78(a) is amended to revise its reference to § 1.16 to reflect the corresponding changes to § 1.16.

Section 1.84: Section 1.84(y) is amended to correct an errant cross-reference to former § 1.174.

Section 1.111: Section 1.111(a)(2)(i) is amended to correct a typographical error.

Section 1.136: Section 1.136(b) is amended to correct an errant cross-reference to former § 1.645.

Section 1.211: Section 1.211 is amended to revise its reference to § 1.16 to reflect the corresponding changes to § 1.16. Section 1.211 is also amended to provide that the Office may delay publishing any application until it includes any application size fee required by the Office under § 1.16(s) or § 1.492(j).

Section 1.324: Section 1.324(a) is amended to correct an errant cross-reference to former § 1.634.

Section 1.445: Section 1.445(a) is amended to provide that the search fee set forth in § 1.445(a)(2)(i) is applicable only if a corresponding prior United States national application has been filed under 35 U.S.C. 111(a) and the basic filing fee, search fee, and the examination fee have been paid therein.

Section 1.492: Section 1.492 is amended to set forth the basic national, search, and examination fees for an international application entering the national stage under 35 U.S.C. 371.

Section 1.492(a) sets forth the basic national fee for an international application entering the national stage under 35 U.S.C. 371: \$300.00 (\$150.00 for a small entity). *See* 35 U.S.C. 41(a)(1)(F).

Section 1.492(b) sets forth the search fees for an international application entering the national stage under 35 U.S.C. 371. The Consolidated Appropriations Act (Section 803(c)(1) of Division B) provides a search fee of \$500.00 (\$250 for a small entity) for the search of the national stage of each international application during fiscal years 2005 and 2006.

Section 1.492(c) sets forth the examination fee for an international application entering the national stage under 35 U.S.C. 371: \$200.00 (\$100.00 for a small entity). *See* 35 U.S.C. 41(a)(3).

The basic national fee, search fee, and examination fee specified in § 1.492(a), (b), and (c) apply only to international applications entering the national stage under 35 U.S.C. 371 for which the basic national fee specified in 35 U.S.C. 41 was not paid before December 8, 2004. Section 1.492 does not also specify the basic national fee for an international

application entering the national stage under 35 U.S.C. 371 for which the basic national fee specified in 35 U.S.C. 41 was paid before December 8, 2004, because (by definition) the basic national fee for such an application was paid before the effective date of the Consolidated Appropriations Act and this final rule.

Section 1.492(d) sets forth the excess claims fee for each independent claim in excess of three; namely, \$200 (\$100 for a small entity) for each claim in independent form in excess of three. *See* 35 U.S.C. 41(a)(2)(A).

Section 1.492(e) sets forth the excess claims fee for each claim (whether dependent or independent) in excess of twenty; namely, \$50 (\$25 for a small entity) for each claim (whether dependent or independent) in excess of twenty. *See* 35 U.S.C. 41(a)(2)(B).

Section 1.492(f) sets forth the fee for an application that contains a multiple dependent claim (formerly in § 1.492(d)). *See* 35 U.S.C. 41(a)(2)(C).

Section 1.492(g) provides that if the excess claims fees required by § 1.492(d) and (e) and multiple dependent claim fee required by § 1.492(f) are not paid with the basic national fee or on later presentation of the claims for which the excess claims or multiple dependent claim fees are due, the fees required by § 1.492(d), (e), and (f) must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

Section 1.492(h) sets forth the surcharge for filing the oath or declaration later than thirty months from the priority date pursuant to § 1.495(c) (formerly in § 1.492(e)).

Section 1.492(i) sets forth the processing fee for filing an English translation of an international application or of any annexes to an international preliminary examination report later than thirty months after the priority date (§§ 1.495(c) and (e)) (formerly in § 1.492(f)).

Section 1.492(j) sets forth the fee for any international application for which the basic national fee was not paid before December 8, 2004, the specification and drawings of which, excluding any sequence listing or computer program listing filed in an electronic medium as prescribed by the Director (*see* § 1.52(f)), exceed 100 sheets of paper (the "application size fee"). The application size fee set forth in § 1.492(j) is \$250.00 (\$125.00 for a small entity) for each additional 50 sheets or fraction thereof. *See* 35 U.S.C. 41(a)(1)(G).

In situations in which a payment submitted for the fees due in an international application entering the national stage under 35 U.S.C. 371 and § 1.495 is insufficient and the applicant has not specified the fees to which the payment is to be applied, the Office will apply the payment in the following order until the payment is expended: (1st) the basic national fee (§ 1.492(a)); (2nd) the application size fee (§ 1.492(j)); (3rd) the surcharge for filing the oath or declaration later than thirty months from the priority date (§ 1.492(h)); (4th) the processing fee for filing an English translation later than thirty months after the priority date (§ 1.492(i)); (5th) the search fee (§ 1.492(b)); (6th) the examination fee (§ 1.492(c)); and (7th) the excess claims fee (§§ 1.492(d), (e), and (f)).

Section 1.495: Section 1.495(c) is subdivided into § 1.495(c)(1) through (c)(4). Section 1.495(c)(1) provides that if applicant complies with § 1.495(b) before expiration of thirty months from the priority date, the Office will notify the applicant if he or she has omitted any of: (1) A translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)); (2) the oath or declaration of the inventor (35 U.S.C. 371(c)(4) and § 1.497), if a declaration of inventorship in compliance with § 1.497 has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26ter.1; (3) the search fee set forth in § 1.492(b); (4) the examination fee set forth in § 1.492(c); and (5) any application size fee set forth in § 1.492(j). Section 1.495(c)(2) provides that a notice under § 1.495(c)(1) will set a period of time within which applicant must provide any omitted translation, oath or declaration of the inventor, search fee set forth in § 1.492(b), examination fee set forth in § 1.492(c), and any application size fee set forth in § 1.492(j) in order to prevent abandonment of the application. Section 1.495(c)(3) and (c)(4) contain existing provisions of § 1.495(c).

Section 41.20: Section 41.20(b) sets forth appeal fees: (1) The fee for filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences is \$500.00 (\$250.00 for a small entity); (2) the additional fee for filing a brief in support of an appeal is \$500.00 (\$250.00 for a small entity); and (3) the additional fee for filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134 is \$1,000.00

(\$500.00 for a small entity). *See* 35 U.S.C. 41(a)(6).

Rule Making Considerations

Administrative Procedure Act: The changes in this final rule merely revise the rules of practice to conform to the patent fees specified in 35 U.S.C. 41 as amended by the Consolidated Appropriations Act (Pub. L. 108-447). Therefore, these rule changes involve interpretive rules or rules of agency practice and procedure under 5 U.S.C. 553(b)(A). *See Bachow Communications Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001); *Paralyzed Veterans of America v. West*, 138 F.3d 1434, 1436 (Fed. Cir. 1998); *Komjathy v. National Transportation Safety Board*, 832 F.2d 1294, 1296-97 (D.C. Cir. 1987). Accordingly, the changes in this final rule may be adopted without prior notice and opportunity for public comment under 5 U.S.C. 553(b) and (c), or thirty-day advance publication under 5 U.S.C. 553(d) or 35 U.S.C. 41(g).

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are required. *See* 5 U.S.C. 603.

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This final rule involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this final rule have been reviewed and previously approved by OMB under the following control numbers: 0651-0016, 0651-0021, 0651-0031, 0651-0032, and 0651-0033. The Office is not resubmitting information collection packages to OMB for its review and approval because the changes in this final rule do not affect the information collection requirements associated with the information collections under these OMB control numbers.

The title, description and respondent description of each of the information collections are shown below with an estimate of each of the annual reporting burdens. Included in each estimate is

the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Number: 0651-0016.

Title: Rules for Patent Maintenance Fees.

Form Numbers: PTO/SB/45/47/65/66.

Type of Review: Approved through May of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions and Federal Government.

Estimated Number of Respondents: 348,140.

Estimated Time Per Response: Between 20 seconds and 8 hours.

Estimated Total Annual Burden Hours: 30,735 hours.

Needs and Uses: Maintenance fees are required to maintain a patent, except for design or plant patents, in force under 35 U.S.C. 41(b). Payment of maintenance fees are required at 3½, 7½ and 11½ years after the grant of the patent. A patent number and application number of the patent on which maintenance fees are paid are required in order to ensure proper crediting of such payments.

OMB Number: 0651-0021.

Title: Patent Cooperation Treaty.

Form Numbers: PCT/RO/101, PCT/RO/134, PCT/IPEA/401, PTO-1382, PTO-1390, PTO/SB/61/PCT, PTO/SB/64/PCT, PCT/Model of power of attorney, PCT/Model of general power of attorney.

Type of Review: Approved through March of 2007.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions, Farms, Federal Government, and State, Local or Tribal Government.

Estimated Number of Respondents: 355,655.

Estimated Time Per Response: Between 15 minutes and 8 hours.

Estimated Total Annual Burden Hours: 347,889.

Needs and Uses: The information collected is required by the Patent Cooperation Treaty (PCT). The general purpose of the PCT is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

OMB Number: 0651-0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08A, PTO/SB/08B, PTO/SB/17i, PTO/SB/17p, PTO/SB/21-27, PTO/SB/30-37, PTO/SB/42-43, PTO/SB/61-64, PTO/SB/64a,

PTO/SB/67–68, PTO/SB/91–92, PTO/SB/96–97, PTO–2053–A/B, PTO–2054–A/B, PTO–2055–A/B, PTOL–413A.

Type of Review: Approved through July of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions, Farms, Federal Government and State, Local and Tribal Governments.

Estimated Number of Respondents: 2,281,439.

Estimated Time Per Response: 1 minute and 48 seconds to 8 hours.

Estimated Total Annual Burden Hours: 2,731,841 hours.

Needs and Uses: During the processing for an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information disclosure statements and citations, requests for extensions of time, the establishment of small entity status; abandonment and revival of abandoned applications, disclaimers, requests for expedited examination of design applications, transmittal forms, requests to inspect, copy and access patent applications, nonpublication requests, certificates of mailing or transmission, submission of priority documents and amendments.

OMB Number: 0651–0032.

Title: Initial Patent Application.

Form Number: PTO/SB/01–07, PTO/SB/13PCT, PTO/SB/16–19, PTO/SB/29 and 29A, PTO/SB/101–110, Electronic New Utility and Provisional Application Forms.

Type of Review: Approved through July of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, Farms, Federal Government, and State, Local, or Tribal Governments.

Estimated Number of Respondents: 454,287.

Estimated Time Per Response: 22 minutes to 10 hours and 45 minutes.

Estimated Total Annual Burden Hours: 4,171,568 hours.

Needs and Uses: The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent

Application Transmittal form, Declaration, Provisional Application Cover Sheet, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in processing and examination of the application.

OMB Number: 0651–0033.

Title: Post Allowance and Refiling.

Form Numbers: PTO/SB/44, PTO/SB/50–51, PTO/SB/51S, PTO/SB/52–53, PTO/SB/56–58, PTOL–85B.

Type of Review: Approved through April of 2007.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, Farms, State, Local and Tribal Governments, and Federal Government.

Estimated Number of Respondents: 223,411.

Estimated Time Per Response: 1.8 minutes to 2 hours.

Estimated Total Annual Burden Hours: 67,261 hours.

Needs and Uses: This collection of information is required to administer the patent laws pursuant to Title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

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.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond

to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

■ For the reasons set forth in the preamble, 37 CFR Parts 1 and 41 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR Part 1 continues to read as follows:

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

■ 2. Section 1.16 is revised to read as follows:

§ 1.16 National application filing, search, and examination fees.

(a) Basic fee for filing each application under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a)) if the application is submitted in compliance with the Office electronic filing system (§ 1.27(b)(2))—\$75.00.

By a small entity (§ 1.27(a))—\$150.00.

By other than a small entity—\$300.00.

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a))—\$395.00.

By other than a small entity—\$790.00.

(b) Basic fee for filing each application for an original design patent:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a))—\$100.00.

By other than a small entity—\$200.00.

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a))—\$175.00.

By other than a small entity—\$350.00.

(c) Basic fee for filing each application for an original plant patent:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a))—\$100.00.

By other than a small entity—\$200.00.

(2) For an application filed before December 8, 2004:
 By a small entity (§ 1.27(a))—\$275.00.
 By other than a small entity—\$550.00.

(d) Basic fee for filing each provisional application:
 By a small entity (§ 1.27(a))—\$100.00.
 By other than a small entity—\$200.00.

(e) Basic fee for filing each application for the reissue of a patent:
 (1) For an application filed on or after December 8, 2004:
 By a small entity (§ 1.27(a))—\$150.00.
 By other than a small entity—\$300.00.

(2) For an application filed before December 8, 2004:
 By a small entity (§ 1.27(a))—\$395.00.
 By other than a small entity—\$790.00.

(f) Surcharge for filing the basic filing fee or oath or declaration on a date later than the filing date of the application, except provisional applications:
 By a small entity (§ 1.27(a))—\$65.00.
 By other than a small entity—\$130.00.

(g) Surcharge for filing the basic filing fee or cover sheet (§ 1.51(c)(1)) on a date later than the filing date of the provisional application:
 By a small entity (§ 1.27(a))—\$25.00.
 By other than a small entity—\$50.00.

(h) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim in independent form in excess of 3:
 By a small entity (§ 1.27(a))—\$100.00.
 By other than a small entity—\$200.00.

(i) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):
 By a small entity (§ 1.27(a))—\$25.00.
 By other than a small entity—\$50.00.

(j) In addition to the basic filing fee in an application, other than a provisional application, that contains, or is amended to contain, a multiple dependent claim, per application:
 By a small entity (§ 1.27(a))—\$180.00.
 By other than a small entity—\$360.00.

(k) Search fee for each application filed under 35 U.S.C. 111 on or after December 8, 2004, for an original patent, except design, plant, or provisional applications:
 By a small entity (§ 1.27(a))—\$250.00.
 By other than a small entity—\$500.00.

(l) Search fee for each application filed on or after December 8, 2004, for an original design patent:
 By a small entity (§ 1.27(a))—\$50.00.
 By other than a small entity—\$100.00.

(m) Search fee for each application filed on or after December 8, 2004, for an original plant patent:

By a small entity (§ 1.27(a))—\$150.00.
 By other than a small entity—\$300.00.

(n) Search fee for each application filed on or after December 8, 2004, for the reissue of a patent:
 By a small entity (§ 1.27(a))—\$250.00.
 By other than a small entity—\$500.00.

(o) Examination fee for each application filed under 35 U.S.C. 111 on or after December 8, 2004, for an original patent, except design, plant, or provisional applications:
 By a small entity (§ 1.27(a))—\$100.00.
 By other than a small entity—\$200.00.

(p) Examination fee for each application filed on or after December 8, 2004, for an original design patent:
 By a small entity (§ 1.27(a))—\$65.00.
 By other than a small entity—\$130.00.

(q) Examination fee for each application filed on or after December 8, 2004, for an original plant patent:
 By a small entity (§ 1.27(a))—\$80.00.
 By other than a small entity—\$160.00.

(r) Examination fee for each application filed on or after December 8, 2004, for the reissue of a patent:
 By a small entity (§ 1.27(a))—\$300.00.
 By other than a small entity—\$600.00.

(s) Application size fee for any application under 35 U.S.C. 111 filed on or after December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:
 By a small entity (§ 1.27(a))—\$125.00.
 By other than a small entity—\$250.00.

Note to § 1.16: See §§ 1.445, 1.482 and 1.492 for international application filing and processing fees.

■ 3. Section 1.17 is amended by revising paragraphs (a), (l) and (m) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

(a) Extension fees pursuant to § 1.136(a):

(1) For reply within first month:
 By a small entity (§ 1.27(a))—\$60.00.
 By other than a small entity—\$120.00.

(2) For reply within second month:
 By a small entity (§ 1.27(a))—\$225.00.
 By other than a small entity—\$450.00.

(3) For reply within third month:
 By a small entity (§ 1.27(a))—\$510.00.
 By other than a small entity—\$1,020.00.

(4) For reply within fourth month:
 By a small entity (§ 1.27(a))—\$795.00.
 By other than a small entity—\$1,590.00.

(5) For reply within fifth month:
 By a small entity (§ 1.27(a))—\$1,080.00.
 By other than a small entity—\$2,160.00.

* * * * *

(l) For filing a petition for the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133, 364, or 371, for the unavoidably delayed payment of the issue fee under 35 U.S.C. 151, or for the revival of an unavoidably terminated reexamination proceeding under 35 U.S.C. 133 (§ 1.137(a)):

By a small entity (§ 1.27(a))—\$250.00.
 By other than a small entity—\$500.00.

(m) For filing a petition for the revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

By a small entity (§ 1.27(a))—\$750.00.
 By other than a small entity—\$1,500.00.

* * * * *

■ 4. Section 1.18 is amended by revising paragraphs (a) through (c) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original patent, except a design or plant patent, or for issuing each reissue patent:

By a small entity (§ 1.27(a))—\$700.00.
 By other than a small entity—\$1,400.00.

(b) Issue fee for issuing an original design patent:

By a small entity (§ 1.27(a))—\$400.00.
 By other than a small entity—\$800.00.

(c) Issue fee for issuing an original plant patent:

By a small entity (§ 1.27(a))—\$550.00.
 By other than a small entity—\$1,100.00.

* * * * *

■ 5. Section 1.20 is amended by revising paragraphs (c) through (g) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(c) In reexamination proceedings

(1) For filing a request for *ex parte* reexamination (§ 1.510(a))—\$2,520.00.

(2) For filing a request for *inter partes* reexamination (§ 1.915(a))—\$8,800.00.

(3) For filing with a request for reexamination or later presentation at any other time of each claim in independent form in excess of 3 and also in excess of the number of claims in independent form in the patent under reexamination:

By a small entity (§ 1.27(a))—\$100.00.
 By other than a small entity—\$200.00.

(4) For filing with a request for reexamination or later presentation at any other time of each claim (whether dependent or independent) in excess of

20 and also in excess of the number of claims in the patent under reexamination (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.27(a))—\$25.00.

By other than a small entity—\$50.00.

(5) If the excess claims fees required by paragraphs (c)(3) and (c)(4) are not paid with the request for reexamination or on later presentation of the claims for which the excess claims fees are due, the fees required by paragraphs (c)(3) and (c)(4) must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

(d) For filing each statutory disclaimer (§ 1.321):

By a small entity (§ 1.27(a))—\$65.00.

By other than a small entity—\$130.00.

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years, the fee being due by three years and six months after the original grant:

By a small entity (§ 1.27(a))—\$450.00.

By other than a small entity—\$900.00.

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years, the fee being due by seven years and six months after the original grant:

By a small entity (§ 1.27(a))—\$1,150.00.

By other than a small entity—\$2,300.00.

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years, the fee being due by eleven years and six months after the original grant:

By a small entity (§ 1.27(a))—\$1,900.00.

By other than a small entity—\$3,800.00.

* * * * *

■ 6. Section 1.27 is amended by revising paragraphs (b) and (c)(3) to read as follows:

§ 1.27 Definition of small entities and establishing status as a small entity to permit payment of small entity fees; when a determination of entitlement to small entity status and notification of loss of entitlement to small entity status are required; fraud on the Office.

* * * * *

(b) *Establishment of small entity status permits payment of reduced fees.*

(1) A small entity, as defined in paragraph (a) of this section, who has properly asserted entitlement to small entity status pursuant to paragraph (c) of this section will be accorded small entity status by the Office in the particular application or patent in which entitlement to small entity status was asserted. Establishment of small entity status allows the payment of certain reduced patent fees pursuant to 35 U.S.C. 41(h)(1).

(2) Submission of an original utility application in compliance with the Office electronic filing system by an applicant who has properly asserted entitlement to small entity status pursuant to paragraph (c) of this section in that application allows the payment of a reduced filing fee pursuant to 35 U.S.C. 41(h)(3).

(c) * * *

(3) *Assertion by payment of the small entity basic filing or basic national fee.* The payment, by any party, of the exact amount of one of the small entity basic filing fees set forth in §§ 1.16(a), 1.16(b), 1.16(c), 1.16(d), 1.16(e), or the small entity basic national fee set forth in § 1.492(a), will be treated as a written assertion of entitlement to small entity status even if the type of basic filing or basic national fee is inadvertently selected in error.

(i) If the Office accords small entity status based on payment of a small entity basic filing or basic national fee under paragraph (c)(3) of this section that is not applicable to that application, any balance of the small entity fee that is applicable to that application will be due along with the appropriate surcharge set forth in § 1.16(f), or § 1.16(g).

(ii) The payment of any small entity fee other than those set forth in paragraph (c)(3) of this section (whether in the exact fee amount or not) will not be treated as a written assertion of entitlement to small entity status and will not be sufficient to establish small entity status in an application or a patent.

* * * * *

■ 7. Section 1.33 is amended by revising paragraph (c) to read as follows:

§ 1.33 Correspondence respecting patent applications, reexamination proceedings, and other proceedings.

* * * * *

(c) All notices, official letters, and other communications for the patent owner or owners in a reexamination proceeding will be directed to the attorney or agent of record (see § 1.32(b)) in the patent file at the address listed on the register of patent attorneys and agents maintained pursuant to §§ 11.5

and 11.11 of this subchapter, or, if no attorney or agent is of record, to the patent owner or owners at the address or addresses of record. Amendments and other papers filed in a reexamination proceeding on behalf of the patent owner must be signed by the patent owner, or if there is more than one owner by all the owners, or by an attorney or agent of record in the patent file, or by a registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34. Double correspondence with the patent owner or owners and the patent owner's attorney or agent, or with more than one attorney or agent, will not be undertaken. If more than one attorney or agent is of record and a correspondence address has not been specified, correspondence will be held with the last attorney or agent made of record.

* * * * *

■ 8. Section 1.51 is amended by revising paragraphs (b)(4) and (c)(4) to read as follows:

§ 1.51 General requisites of an application.

* * * * *

(b) * * *

(4) The prescribed filing fee, search fee, examination fee, and application size fee, see § 1.16.

(c) * * *

(4) The prescribed filing fee and application size fee, see § 1.16.

* * * * *

■ 9. Section 1.52 is amended by revising the heading and adding paragraph (f) to read as follows:

§ 1.52 Language, paper, writing, margins, compact disc specifications.

* * * * *

(f)(1) Any sequence listing in an electronic medium in compliance with §§ 1.52(e) and 1.821(c) or (e), and any computer program listing filed in an electronic medium in compliance with §§ 1.52(e) and 1.96, will be excluded when determining the application size fee required by § 1.16(s) or § 1.492(j).

(2) Except as otherwise provided in this paragraph, the paper size equivalent of the specification and drawings of an application submitted via the Office electronic filing system will be considered to be the number of sheets of paper present in the specification and drawings of the application when entered into the Office file wrapper after being rendered by the Office electronic filing system for purposes of computing the application size fee required by § 1.16(s). Any sequence listing in compliance with § 1.821(c) or (e), and any computer program listing in

compliance with § 1.96, submitted via the Office electronic filing system will be excluded when determining the application size fee required by § 1.16(s) if the listing is submitted in ACSII text as part of an associated file.

■ 10. Section 1.53 is amended by revising paragraphs (c)(3), (f) and (g) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(c) * * *

(3) A provisional application filed under paragraph (c) of this section may be converted to a nonprovisional application filed under paragraph (b) of this section and accorded the original filing date of the provisional application. The conversion of a provisional application to a nonprovisional application will not result in either the refund of any fee properly paid in the provisional application or the application of any such fee to the filing fee, or any other fee, for the nonprovisional application. Conversion of a provisional application to a nonprovisional application under this paragraph will result in the term of any patent to issue from the application being measured from at least the filing date of the provisional application for which conversion is requested. Thus, applicants should consider avoiding this adverse patent term impact by filing a nonprovisional application claiming the benefit of the provisional application under 35 U.S.C. 119(e) (rather than converting the provisional application into a nonprovisional application pursuant to this paragraph). A request to convert a provisional application to a nonprovisional application must be accompanied by the fee set forth in § 1.17(i) and an amendment including at least one claim as prescribed by the second paragraph of 35 U.S.C. 112, unless the provisional application under paragraph (c) of this section otherwise contains at least one claim as prescribed by the second paragraph of 35 U.S.C. 112. The nonprovisional application resulting from conversion of a provisional application must also include the filing fee, search fee, and examination fee for a nonprovisional application, an oath or declaration by the applicant pursuant to §§ 1.63, 1.162, or 1.175, and the surcharge required by § 1.16(f) if either the basic filing fee for a nonprovisional application or the oath or declaration was not present on the filing date accorded the resulting nonprovisional application (i.e., the filing date of the original provisional application). A request to convert a provisional

application to a nonprovisional application must also be filed prior to the earliest of:

(i) Abandonment of the provisional application filed under paragraph (c) of this section; or

(ii) Expiration of twelve months after the filing date of the provisional application filed under paragraph (c) of this section.

* * * * *

(f) Completion of application subsequent to filing—Nonprovisional (including continued prosecution or reissue) application.

(1) If an application which has been accorded a filing date pursuant to paragraph (b) or (d) of this section does not include the basic filing fee, the search fee, or the examination fee, or if an application which has been accorded a filing date pursuant to paragraph (b) of this section does not include an oath or declaration by the applicant pursuant to §§ 1.63, 1.162 or § 1.175, and applicant has provided a correspondence address (§ 1.33(a)), applicant will be notified and given a period of time within which to pay the basic filing fee, search fee, and examination fee, file an oath or declaration in an application under paragraph (b) of this section, and pay the surcharge if required by § 1.16(f) to avoid abandonment.

(2) If an application which has been accorded a filing date pursuant to paragraph (b) of this section does not include the basic filing fee, the search fee, the examination fee, or an oath or declaration by the applicant pursuant to §§ 1.63, 1.162 or § 1.175, and applicant has not provided a correspondence address (§ 1.33(a)), applicant has two months from the filing date of the application within which to pay the basic filing fee, search fee, and examination fee, file an oath or declaration, and pay the surcharge if required by § 1.16(f) to avoid abandonment.

(3) If the excess claims fees required by §§ 1.16(h) and (i) and multiple dependent claim fee required by § 1.16(j) are not paid on filing or on later presentation of the claims for which the excess claims or multiple dependent claim fees are due, the fees required by §§ 1.16(h), (i), and (j) must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency. If the application size fee required by § 1.16(s) (if any) is not paid on filing or on later presentation of the amendment necessitating a fee or additional fee under § 1.16(s), the fee required by § 1.16(s) must be paid prior

to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

(4) This paragraph applies to continuation or divisional applications under paragraphs (b) or (d) of this section and to continuation-in-part applications under paragraph (b) of this section. See § 1.63(d) concerning the submission of a copy of the oath or declaration from the prior application for a continuation or divisional application under paragraph (b) of this section.

(5) If applicant does not pay one of the basic filing or the processing and retention fees (§ 1.21(l)) during the pendency of the application, the Office may dispose of the application.

(g) Completion of application subsequent to filing—Provisional application.

(1) If a provisional application which has been accorded a filing date pursuant to paragraph (c) of this section does not include the cover sheet required by § 1.51(c)(1) or the basic filing fee (§ 1.16(d)), and applicant has provided a correspondence address (§ 1.33(a)), applicant will be notified and given a period of time within which to pay the basic filing fee, file a cover sheet (§ 1.51(c)(1)), and pay the surcharge required by § 1.16(g) to avoid abandonment.

(2) If a provisional application which has been accorded a filing date pursuant to paragraph (c) of this section does not include the cover sheet required by § 1.51(c)(1) or the basic filing fee (§ 1.16(d)), and applicant has not provided a correspondence address (§ 1.33(a)), applicant has two months from the filing date of the application within which to pay the basic filing fee, file a cover sheet (§ 1.51(c)(1)), and pay the surcharge required by § 1.16(g) to avoid abandonment.

(3) If the application size fee required by § 1.16(s) (if any) is not paid on filing, the fee required by § 1.16(s) must be paid prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

(4) If applicant does not pay the basic filing fee during the pendency of the application, the Office may dispose of the application.

* * * * *

■ 11. Section 1.69 is amended by revising paragraph (b) to read as follows:

§ 1.69 Foreign language oaths and declarations.

* * * * *

(b) Unless the text of any oath or declaration in a language other than

English is in a form provided by the Patent and Trademark Office or in accordance with PCT Rule 4.17(iv), it must be accompanied by an English translation together with a statement that the translation is accurate, except that in the case of an oath or declaration filed under § 1.63, the translation may be filed in the Office no later than two months from the date applicant is notified to file the translation.

■ 12. Section 1.75 is amended by revising paragraph (c) to read as follows:

§ 1.75 Claim(s).

* * * * *

(c) One or more claims may be presented in dependent form, referring back to and further limiting another claim or claims in the same application. Any dependent claim which refers to more than one other claim (“multiple dependent claim”) shall refer to such other claims in the alternative only. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. For fee calculation purposes under § 1.16, a multiple dependent claim will be considered to be that number of claims to which direct reference is made therein. For fee calculation purposes also, any claim depending from a multiple dependent claim will be considered to be that number of claims to which direct reference is made in that multiple dependent claim. In addition to the other filing fees, any original application which is filed with, or is amended to include, multiple dependent claims must have paid therein the fee set forth in § 1.16(j). Claims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim. A multiple dependent claim shall be construed to incorporate by reference all the limitations of each of the particular claims in relation to which it is being considered.

* * * * *

■ 13. Section 1.78 is amended by revising paragraph (a)(4) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a) * * *

(4) A nonprovisional application, other than for a design patent, or an international application designating the United States of America may claim an invention disclosed in one or more prior-filed provisional applications. In order for an application to claim the benefit of one or more prior-filed provisional applications, each prior-filed provisional application must name

as an inventor at least one inventor named in the later-filed application and disclose the named inventor’s invention claimed in at least one claim of the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior-filed provisional application must be entitled to a filing date as set forth in § 1.53(c), and the basic filing fee set forth in § 1.16(d) must be paid within the time period set forth in § 1.53(g).

* * * * *

■ 14. Section 1.84 is amended by revising paragraph (y) to read as follows:

§ 1.84 Standards for drawings.

* * * * *

(y) *Types of drawings.* See § 1.152 for design drawings, § 1.165 for plant drawings, and § 1.173(a)(2) for reissue drawings.

■ 15. Section 1.111 is amended by revising the first sentence of paragraph (a)(2)(i) to read as follows:

§ 1.111 Reply by applicant or patent owner to a non-final Office action.

(a) * * *

(2) * * * (i) A reply that is supplemental to a reply that is in compliance with § 1.111(b) will not be entered as a matter of right except as provided in paragraph (a)(2)(ii) of this section. * * *

* * * * *

■ 16. Section 1.136 is amended by revising the fourth sentence of paragraph (b) to read as follows:

§ 1.136 Extensions of time.

* * * * *

(b) * * * See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in ex parte reexamination proceedings; § 1.956 for extensions of time in inter partes reexamination proceedings; and §§ 41.4(a) and 41.121(a)(3) of this title for extensions of time in contested cases before the Board of Patent Appeals and Interferences. * * *

* * * * *

■ 17. Section 1.211 is amended by revising paragraph (c) to read as follows:

§ 1.211 Publication of applications.

* * * * *

(c) An application filed under 35 U.S.C. 111(a) will not be published until it includes the basic filing fee (§ 1.16(a) or 1.16(c)), any English translation required by § 1.52(d), and an executed oath or declaration under § 1.63. The Office may delay publishing any application until it includes any

application size fee required by the Office under § 1.16(s) or § 1.492(j), a specification having papers in compliance with § 1.52 and an abstract (§ 1.72(b)), drawings in compliance with § 1.84, and a sequence listing in compliance with §§ 1.821 through 1.825 (if applicable), and until any petition under § 1.47 is granted.

* * * * *

■ 18. Section 1.324 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 1.324 Correction of inventorship in patent, pursuant to 35 U.S.C. 256.

(a) * * * A petition to correct inventorship of a patent involved in an interference must comply with the requirements of this section and must be accompanied by a motion under § 41.121(a)(2) or § 41.121(a)(3) of this title.

* * * * *

■ 19. Section 1.445 is amended by revising paragraph (a)(2) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) * * *

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16):

(i) If a corresponding prior United States national application under 35 U.S.C. 111(a) has been filed on or after December 8, 2004, the basic filing fee under § 1.16(a), search fee under § 1.16(k), and examination fee under § 1.16(o) have been paid therein, and the corresponding prior United States national application is identified by application number, if known, or if the application number is not known by the filing date, title, and name of applicant (and preferably the application docket number), in the international application or accompanying papers at the time of filing the international application—\$300.00.

(ii) If a corresponding prior United States national application under 35 U.S.C. 111(a) has been filed before December 8, 2004, the basic filing fee under § 1.16 has been paid therein, and the corresponding prior United States national application is identified by application number, if known, or if the application number is not known by the filing date, title, and name of applicant (and preferably the application docket number), in the international application or accompanying papers at the time of filing the international application—\$300.00.

(iii) For all situations not provided for in paragraphs (a)(2)(i) or (a)(2)(ii) of this section—\$1000.00.

* * * * *

■ 20. Section 1.492 is revised to read as follows:

§ 1.492 National stage fees.

The following fees and charges are established for international applications entering the national stage under 35 U.S.C. 371:

(a) The basic national fee for an international application entering the national stage under 35 U.S.C. 371 if the basic national fee was not paid before December 8, 2004:

- By a small entity (§ 1.27(a))—\$150.00.
By other than a small entity—\$300.00.

(b) Search fee for an international application entering the national stage under 35 U.S.C. 371 if the basic national fee was not paid before December 8, 2004:

- By a small entity (§ 1.27(a))—\$250.00.
By other than a small entity—\$500.00.

(c) The examination fee for an international application entering the national stage under 35 U.S.C. 371 if the basic national fee was not paid before December 8, 2004:

- By a small entity (§ 1.27(a))—\$100.00.
By other than a small entity—\$200.00.

(d) In addition to the basic national fee, for filing or on later presentation at any other time of each claim in independent form in excess of 3:

- By a small entity (§ 1.27(a))—\$100.00.
By other than a small entity—\$200.00.

(e) In addition to the basic national fee, for filing or on later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

- By a small entity (§ 1.27(a))—\$25.00.
By other than a small entity—\$50.00.

(f) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim, per application:

- By a small entity (§ 1.27(a))—\$180.00.
By other than a small entity—\$360.00.

(g) If the excess claims fees required by paragraphs (d) and (e) of this section and multiple dependent claim fee required by paragraph (f) of this section are not paid with the basic national fee or on later presentation of the claims for which the excess claims or multiple dependent claim fees are due, the fees required by paragraphs (d), (e), and (f) of this section must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

(h) Surcharge for filing the oath or declaration later than thirty months from the priority date pursuant to § 1.495(c):

By a small entity (§ 1.27(a))—\$65.00.
By other than a small entity—\$130.00.

(i) For filing an English translation of an international application or of any annexes to an international preliminary examination report later than thirty months after the priority date (§§ 1.495(c) and (e))—\$130.00.

(j) Application size fee for any international application for which the basic national fee was not paid before December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:

- By a small entity (§ 1.27(a))—\$125.00.
By other than a small entity—\$250.00.

■ 21. Section 1.495 is amended by revising paragraph (c) to read as follows:

§ 1.495 Entering the national stage in the United States of America.

* * * * *

(c)(1) If applicant complies with paragraph (b) of this section before expiration of thirty months from the priority date, the Office will notify the applicant if he or she has omitted any of:

- (i) A translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2));
(ii) The oath or declaration of the inventor (35 U.S.C. 371(c)(4) and § 1.497), if a declaration of inventorship in compliance with § 1.497 has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26ter.1;
(iii) The search fee set forth in § 1.492(b);
(iv) The examination fee set forth in § 1.492(c); and
(v) Any application size fee required by § 1.492(j).

(2) A notice under paragraph (c)(1) of this section will set a period of time within which applicant must provide any omitted translation, oath or declaration of the inventor, search fee set forth in § 1.492(b), examination fee set forth in § 1.492(c), and any application size fee required by § 1.492(j) in order to avoid abandonment of the application.

(3) The payment of the processing fee set forth in § 1.492(i) is required for acceptance of an English translation later than the expiration of thirty months after the priority date. The payment of the surcharge set forth in § 1.492(h) is required for acceptance of the oath or declaration of the inventor later than the expiration of thirty months after the priority date.

(4) A "Sequence Listing" need not be translated if the "Sequence Listing"

complies with PCT Rule 12.1(d) and the description complies with PCT Rule 5.2(b).

* * * * *

PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

■ 22. The authority citation for 37 CFR Part 41 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135.

■ 23. Section 41.20 is amended by revising paragraph (b) to read as follows:

§ 41.20 Fees.

* * * * *

(b) Appeal fees.

(1) For filing a notice of appeal from the examiner to the Board:

- By a small entity (§ 1.27(a) of this title)—\$250.00.
By other than a small entity—\$500.00.

(2) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

- By a small entity (§ 1.27(a) of this title)—\$250.00.
By other than a small entity—\$500.00.

(3) For filing a request for an oral hearing before the Board in an appeal under 35 U.S.C. 134:

- By a small entity (§ 1.27(a) of this title)—\$500.00.
By other than a small entity—\$1,000.00.

Dated: January 18, 2005.

Jon W. Dudas,

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

[FR Doc. 05-1377 Filed 1-26-05; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AL23

Loan Guaranty: Implementation of Public Law 107-103

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms, with one modification, an amendment to the Department of Veterans Affairs (VA) loan guaranty regulations implementing sections 401 through 404 of the Veterans Education and Benefits Expansion Act of 2001. The amendment incorporates into the regulations the following statutory changes: an increase in the maximum amount of loan guaranty