

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 980108007-8131-02]

RIN 0651-AA97

Changes to Continued Prosecution Application Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office) is confirming the amendment of its regulations that removed the requirement that the prior application of a continued prosecution application (CPA) must have been filed on or after June 8, 1995. This requirement was removed in response to requests from the public.

DATES: This final rule is effective on July 2, 1998. The interim rule, published at 63 FR 5732, was effective February 4, 1998.

Applicability date: This rule change applies to all continued prosecution applications filed on or after December 1, 1997.

FOR FURTHER INFORMATION CONTACT:

Concerning this final rule: Hiram H. Bernstein or Robert W. Bahr, Senior Legal Advisors, by telephone at (703) 305-9285; or by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, DC 20231; or by facsimile to (703) 308-6916, marked to the attention of Mr. Bernstein.

Concerning § 1.53 in General: John F. Gonzales, Fred A. Silverberg, or Robert W. Bahr, Senior Legal Advisors, at the above-mentioned telephone number.

SUPPLEMENTARY INFORMATION: Continued Prosecution Application (CPA) practice under § 1.53(d) was adopted to permit applicants to obtain further examination of an application. *See Changes to Patent Practice and Procedure*; Final Rule Notice, 62 FR 53131, 53147 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* 63, 76-77 (October 21, 1997). Section 1.53(d) as adopted, effective December 1, 1997, required, *inter alia*, that the prior application of a CPA be filed on or after June 8, 1995. *See* Final Rule Notice, 62 FR at 53186, 1203 *Off. Gaz. Pat. Office* at 112. Thus, if an application was filed before June 8, 1995, the applicant was required to file a continuation (or divisional) under § 1.53(b) to obtain further examination.

Section 1.53(b) requires that any application filed thereunder (including a continuation or divisional) contain a

specification (including at least one claim) and any necessary drawing. While § 1.53(b) permits the submission of a rewritten specification (with all prior amendments incorporated), such an option is only practical to those who have the prior application in electronic form. For those applicants who do not have the prior application in electronic form, their only option is to submit a copy of the prior application (including any appendix) along with a copy of all the amendments made in the prior application, as well as copies of all other papers filed in the prior application (e.g., information disclosure statements (IDSs), affidavits, declarations) that are to be considered in the continuing application.

Subsequent to the adoption of the change to § 1.53(d), the Office received a number of comments indicating that it takes a considerable amount of time to prepare the papers required by § 1.53(b), even when copied from a prior application. In view of these concerns, the Office amended § 1.53(d)(1)(i) by an immediately effective interim rule to eliminate its requirement that the prior application of a CPA be filed on or after June 8, 1995, and requested public comment on this interim rule change. *See Changes to Continued Prosecution Application Practice*; Interim Rule Notice, 63 FR 5732 (February 4, 1998), 1207 *Off. Gaz. Pat. Office* 83 (February 24, 1998).

The Office has received a number of comments by telephone expressing support for the change to § 1.53(d)(1)(i), as well as its immediate adoption and applicability to CPAs filed on or after December 1, 1997 (*i.e.*, all CPAs). The Office, however, has received no written comments on the change to § 1.53(d)(1)(i). Accordingly, the change to § 1.53(d)(1)(i) in the interim rule—removal of the requirement that the prior application of a continued prosecution application (CPA) under § 1.53(d) must have been filed on or after June 8, 1995—is adopted as a final rule.

As discussed in the Interim Rule Notice, no patent issuing from a CPA under § 1.53(d) is entitled to the provisions of 35 U.S.C. 154(c). To avoid confusion as to the term of any patent issuing on a CPA, other than an application for a reissue or design patent, of an application filed before June 8, 1995, the Office will include the following notice on any patent, other than a reissue or design, issuing on a CPA:

This patent issued on a continued prosecution application filed under 37 CFR 1.53(d), and is subject to the twenty-year patent term provisions of 35 U.S.C. 154(a)(2).

The term of a design patent is fourteen years beginning on the date of grant as provided in 35 U.S.C. 173. The term of a reissue patent is the unexpired part of the term of the original patent as provided in 35 U.S.C. 251. Since the term of a reissue or design patent is not affected by the filing of a CPA, the above-mentioned notice will not be printed on any reissue or design patent.

Other Considerations

This final rule is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Order 12612 (October 26, 1987), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It has been determined that this rulemaking is not significant for the purposes of Executive Order 12866 (September 30, 1993).

This final rule involves a collection of information subject to the Paperwork Reduction Act. This final rule involves the deletion of the requirement which stated that the prior application of a continued prosecution application must have been filed on or after June 8, 1995. This collection of information has been previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0651-0032. The public reporting burden for this collection of information is estimated to average 7.88 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the information. Send comments regarding this burden estimate or any other aspect of the data requirement, including suggestions for reducing the burden to Hiram H. Bernstein or Robert W. Bahr at the address specified above and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, N.W., Washington, D.C., 20503 (Attn: PTO Desk Officer).

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.

The principal impact of this final rule is to relieve a restriction in § 1.53(d)(1)(i) to permit applicants to file a CPA in the situation in which the prior application was filed before June 8, 1995.

The Office has determined that this final rule has no Federalism implications affecting the relationship between the National Government and

the States as outlined in Executive Order 12612 (October 26, 1987).

List of Subjects in 37 CFR Part 1

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

For the reasons set forth in the preamble, the interim rule amending 37 CFR Part 1 which was published at 63 FR 5732-5734 on February 4, 1998, is adopted as a final rule without change.

Dated: June 25, 1998.

Bruce A. Lehman,

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

[FR Doc. 98-17632 Filed 7-1-98; 8:45 am]

BILLING CODE 3510-16-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 303

RIN 0970-AB67

Child Support Enforcement Program; Quarterly Wage and Unemployment Compensations Claims Reporting to the National Directory of New Hires

AGENCY: Office of Child Support
Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 453A(g)(2)(B) of the Social Security Act (the Act), as added by section 313(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and amended by section 5533 of Public Law 105-33, section 303(h) of the Act, in part, as amended by section 316(g) of PRWORA, and section 3304(a)(16) of the Internal Revenue Code of 1986, as amended by section 316(g) of PRWORA. These provisions require certain State entities to furnish quarterly wage and unemployment compensation data to the National Directory of New Hires or to the Secretary of Health and Human Services. A Notice of Proposed Rulemaking was published in the **Federal Register** on October 7, 1997 (62 FR 52306).

EFFECTIVE DATE: The final rule is effective August 3, 1998.

FOR FURTHER INFORMATION CONTACT:
Anne Benson, Policy Branch, OCSE
(202) 401-1467, e-mail:
abenson@acf.dhhs.gov. Deaf and
hearing-impaired individuals may call

the federal Dual Party Relay Service at 1-800-877-8339 between 8:00 a.m. and 7:00 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This regulation is published under the authority of section 453A(g)(2)(B) of the Social Security Act (the Act), 42 U.S.C. 653A(g)(2)(B), as added by section 313(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104-193 and amended by section 5533 of Public Law 105-33; section 303(h) of the Act, in part, 42 U.S.C. 503(h), as amended by section 316(g) of PRWORA; and section 3304(a)(16) of the Internal Revenue Code of 1986, 26 U.S.C. 3304(a)(16), as amended by section 316(g) of PRWORA.

This regulation is also issued under the authority granted to the Secretary of Health and Human Services (Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which she is responsible under the Act.

Section 453A(g)(2)(B) of the Act requires the State Directory of New Hires to furnish, on a quarterly basis, data concerning the wages and unemployment compensation paid to individuals to the National Directory of New Hires. Pursuant to section 453A(g)(2)(B) of the Act, the Secretary of the Department of Health and Human Services is required to publish regulations to identify the dates, format, and data elements necessary for the State Directory of New Hires to furnish the quarterly wage and unemployment compensation data to the National Directory of New Hires.

Section 3304(a)(16) of the Internal Revenue Code of 1986 contains requirements that must be included in State Unemployment Compensation laws for employers in the State to receive Federal Unemployment Tax credits. Section 316(g) of Public Law 104-193 amended section 3304(a)(16) of the Internal Revenue Code of 1986 to provide that the wage and unemployment compensation information contained in the records of the State agency administering that program shall be furnished to the Secretary of Health and Human Services, in accordance with regulations promulgated by the Secretary, as may be necessary for the purposes of the National Directory of New Hires under section 453(i)(1) of the Act. The Secretary will maintain the quarterly wage and unemployment compensation data reported pursuant to section 3304(a)(16) in the National Directory of

New Hires (NDNH), which is established pursuant to section 453 of the Act.

Section 303(h)(1)(A) of the Act, as amended by section 316(g) of Public Law 104-193, requires the State agency charged with the administration of the unemployment compensation program, on a reimbursable basis, to disclose quarterly, to the Secretary of Health and Human Services, wage and claim information, as required pursuant to section 453(i)(1) of the Act, that is contained in the records of such agency. As is the case with information reported pursuant to section 3304(a)(16) of the Internal Revenue Code of 1986, the Secretary will maintain any quarterly wage and unemployment compensation data reported pursuant to section 303(h) of the Act in the NDNH. Section 303(h)(3)(A) of the Act defines 'wage information' as "information regarding wages paid to an individual, the social security account number of such individual, and the name, address, State, and the Federal employer identification number of the employer paying such wages to such individual." Section 303(h)(3)(B) defines 'claim information' as "information regarding whether an individual is receiving, has received, or has made application for, unemployment compensation, the amount of any such compensation being received (or to be received by such individual), and the individual's current (or most recent) home address." Title III of the Act, Grants to States for Unemployment Compensation Administration, is directly administered by the Department of Labor. We are referencing section 303(h)(1)(A) of the Act because this provision references information required pursuant to section 453(i)(1) of the Act. Section 453(i)(1) is administered by the Department of Health and Human Services, and the information that is required pursuant to that section (which in turn references information supplied pursuant to section 453A(g)(2)) is established in this rule. The Secretary also adopted the definitions included in section 303(h) in the rule in order to enable the implementation of the provisions in an integrated and complementary manner.

Background

The Federal Parent Locator Service (FPLS) is a computerized network established pursuant to section 453 of the Act, 42 U.S.C. 653, through which States may request information from Federal and State agencies to find noncustodial parents and/or their employers for purposes of establishing paternity and securing support. The