

DEPARTMENT OF COMMERCE**Patent and Trademark Office****37 CFR Part 1**

[Docket No.: 2005-P-052]

RIN 0651-AB84

Revision of Search and Examination Fees for Patent Cooperation Treaty Applications Entering the National Stage in the United States**AGENCY:** United States Patent and Trademark Office, Commerce.**ACTION:** Interim rule.

SUMMARY: Among other changes to patent and trademark fees, the Consolidated Appropriations Act, 2005 (Consolidated Appropriations Act), splits the national fee for Patent Cooperation Treaty (PCT) applications entering the national stage into a separate national fee, search fee and examination fee, during fiscal years 2005 and 2006. The Office is in this notice reducing the search fee and examination fee for certain PCT applications entering the national stage. The Office has implemented the changes to the patent fees provided in the Consolidated Appropriations Act in a separate final rule.

DATES: *Effective Date:* February 1, 2005.

Applicability Date: The changes in this interim rule apply to all 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 is paid on or after December 8, 2004.

Comment Deadline Date: To be ensured of consideration, written comments must be received on or before April 4, 2005. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to AB84.Comments@uspto.gov. Comments may also be submitted by mail addressed to: Mail Stop 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. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office prefers that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking

Portal. See the Federal eRulemaking Portal Web site (<http://www.regulations.gov>) for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: <http://www.uspto.gov>). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

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: Mail Stop 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 or national 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 Public Law 108-447, 118 Stat. 2809 (2004). The Consolidated Appropriations Act provides a fee of \$500.00 for the search of the national stage of each international application (Section 803(c)(1) of Division B) and a fee of \$200.00 for the examination of the national stage of each international application (35 U.S.C. 41(a)(3)(D)) during fiscal years 2005 and 2006.

35 U.S.C. 376 provides that: “[t]he Director may also refund any part of the search fee, the national fee, the preliminary examination fee and any additional fees, where he determines such refund to be warranted.” See 35 U.S.C. 376(b). Under the authority provided in 35 U.S.C. 376: (1) The Office will refund the entire search fee less \$100.00 (\$50.00 for small entities) if the search fee as set forth in §§ 1.445(a)(2) and (a)(3) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority for all of the claims presented in the application entering the national

stage; and (2) the Office will refund \$100.00 (\$50.00 for small entities) if an international search report on the international application has been prepared and is provided to the Office no later than the time at which the search fee is paid. In addition, under the authority provided in 35 U.S.C. 376, the Office will refund the entire examination fee less \$100.00 (\$50.00 for small entities) if an international preliminary examination report on the international application prepared by the United States International Preliminary Examining Authority states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33(1) to (4) have been satisfied for all of the claims presented in the application entering the national stage.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

Section 1.492: Section 1.492(b) sets forth the search fees for an international application entering the national stage under 35 U.S.C. 371. Section 1.492(b) is amended to provide that: (1) The search fee for an international application entering the national stage under 35 U.S.C. 371 is \$100.00 (\$50.00 for a small entity) if the search fee as set forth in §§ 1.445(a)(2) and (a)(3) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority for all of the claims presented in the application entering the national stage; (2) the search fee for an international application entering the national stage under 35 U.S.C. 371 is \$400.00 (\$200.00 for a small entity) if an international search report on the international application has been prepared and is provided to the Office no later than the time at which the search fee is paid; and (3) the search fee for an international application entering the national stage under 35 U.S.C. 371 is \$500.00 (\$250.00 for a small entity) in all other situations.

Section 1.492(c) sets forth the examination fee for an international application entering the national stage under 35 U.S.C. 371. Section 1.492(c) is amended to provide that: (1) The examination fee for an international application entering the national stage under 35 U.S.C. 371 is \$100.00 (\$50.00 for a small entity), if an international preliminary examination report on the international application prepared by the United States International Preliminary Examining Authority states that the criteria of novelty, inventive step (non-obviousness), and industrial

applicability, as defined in PCT Article 33(1) to (4), have been satisfied for all of the claims presented in the application entering the national stage; and (2) the examination fee for an international application entering the national stage under 35 U.S.C. 371 is \$200.00 (\$100.00 for a small entity) in all other situations.

Section 1.496: Section 1.496 is amended to revise its references to § 1.492 to reflect the changes in § 1.492.

Rule Making Considerations

Administrative Procedure Act: Pursuant to its authority under 35 U.S.C. 376(b), the Office has reduced the patent fees set forth in § 1.492 to less than the amount specified in 35 U.S.C. 41. Existing rights and obligations are not otherwise changed. The Office has good cause to implement this fee reduction without prior notice and comment. It is in the public interest to immediately implement the reduced search and examination fees because delay in the adoption of these fee reductions would cause harm to those applicants who currently meet the conditions for entitlement to a fee reduction. Without immediate implementation, applicants who are currently filing search and examination fees in order to avoid abandonment of their applications will be unnecessarily paying higher search and examination fees. The Office believes the public wants these new reduced fees to become effective as soon as possible as the public should benefit from the efficiencies and savings resulting therefrom. In addition, the Office believes that prior notice and comment is unnecessary because it does not expect the public to object to the reduction of search and examination fees. Moreover, the Office does not believe the public needs time to conform its conduct so as to avoid violation of these regulations. In order to give the public the immediate benefit of the Office's decision to reduce specified search and examination fees, the Office finds, pursuant to the authority provided at 5 U.S.C. 553(b)(B), good cause to adopt this change without prior notice and an opportunity for public comment, as such procedures are contrary to the public interest. *See Nat. Customs Brokers & Forwarders Ass'n v. U.S.*, 59 F.3d 1219, 1223–24 (Fed. Cir. 1995).

Nothing in this or any other law requires delayed implementation of the fee reductions. 35 U.S.C. 41(g) provides that: “[n]o fee established by the Director under [35 U.S.C. 41] shall take effect until at least 30 days after notice of the fee has been published in the

Federal Register and in the Official Gazette of the Patent and Trademark Office.” Since the reduced search fees and examination fees specified in §§ 1.492(b) and (c) are established by the Office on the basis of the Office's authority under 35 U.S.C. 376(b) (rather than the authority in 35 U.S.C. 41), the thirty-day advance publication requirement of 35 U.S.C. 41(g) does not apply to the reduced search fees and examination fees specified in § 1.492(b) and (c).

Accordingly, the changes in this interim 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 interim 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 collection of information involved in this interim rule has been reviewed and previously approved by OMB under the following control number: 0651–0021. The Office is not resubmitting an information collection package to OMB for its review and approval because the changes in this interim rule do not affect the information collection requirements associated with the information collection under this OMB control number.

Interested persons are requested to send comments regarding this information collection, 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 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, 37 CFR part 1 is 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 1.492 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.492 National stage fees.

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(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:

(1) If the search fee as set forth in §§ 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.27(a))	\$50.00
By other than a small entity	\$100.00

(2) If an international search report on the international application has been prepared and is provided to the Office no later than the time at which the search fee is paid:

By a small entity (§ 1.27(a))	\$200.00
By other than a small entity	\$400.00

(3) In all situations not provided for in paragraphs (b)(1) or (b)(2) of this section:

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:

(1) If an international preliminary examination report on the international application prepared by the United States International Preliminary Examining Authority states that the

criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33(1) to (4) have been satisfied for all of the claims presented in the application entering the national stage:

By a small entity (§ 1.27(a)) \$50.00
By other than a small entity \$100.00

(2) In all situations not provided for in paragraph (c)(1) of this section:

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

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■ 3. Section 1.496 is amended by revising paragraph (b) to read as follows:

§ 1.496 Examination of international applications in the national stage.

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(b) A national stage application filed under 35 U.S.C. 371 may have paid therein the examination fee as set forth in § 1.492(c)(1) if it contains, or is amended to contain, at the time of entry into the national stage, only claims which have been indicated in an international preliminary examination report prepared by the United States Patent and Trademark Office as satisfying the criteria of PCT Article 33(1) through (4) as to novelty, inventive step and industrial applicability. Such national stage applications in which the examination fee as set forth in § 1.492(c)(1) has been paid may be amended subsequent to the date of entry into the national stage only to the extent necessary to eliminate objections as to form or to cancel rejected claims. Such national stage applications in which the examination fee as set forth in § 1.492(c)(1) has been paid will be taken up out of order.

Dated: January 24, 2005.

Jon W. Dudas,

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

[FR Doc. 05-1850 Filed 1-31-05; 8:45 am]

BILLING CODE 3510-16-P

POSTAL SERVICE

39 CFR Part 111

Repositionable Notes on Letter and Flat Sized Mailpieces

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: The Postal Service is implementing an experimental classification, Repositionable Notes (RPNs), as a one-year provisional service allowing mailers to attach a reusable self-adhesive message note to the outside envelope or paper cover of

discount First-Class Mail, Standard Mail, or Periodicals rate mailpieces for a fee. RPNs add impact, value, and ultimately a greater return on investment for direct mailers by calling attention to a product or service. This enhanced value to direct mail will provide an opportunity for the Postal Service to drive the growth of direct mail.

DATES: *Effective Date:* This interim rule is effective on April 3, 2005, and expires on April 3, 2006.

FOR FURTHER INFORMATION CONTACT:

Donald Lagasse, 202-268-7269;

Donald.T.Lagasse@usps.gov.

SUPPLEMENTARY INFORMATION: On

January 11, 2005, following the recommended decision of the Postal Rate Commission issued on December 10, 2004, the Governors of the Postal Service approved a provisional classification for repositionable notes (RPN). It is important to note that this provisional classification does not change any of the current rate eligibility standards for discount First-Class Mail and Standard Mail letters.

The current standards allow mailers to place RPNs on First-Class Mail and Standard Mail letter-size mailpieces claimed at automation rates at no additional charge. This provisional classification applies a fee to the use of RPNs and expands the current standards to allow RPNs on all letter-size and flat-size mailpieces mailed at discount First-Class Mail, Standard Mail, or Periodicals rates.

To be eligible, RPNs attached to discount First-Class Mail, Standard Mail, or Periodicals rate pieces must meet the standards for RPNs in this interim rule. RPNs must:

- Measure 3 inches by 3 inches, plus or minus 1/8 inch for either dimension.
- Not contain phosphorescent or red fluorescent colorants.
- Not be manually affixed.
- Be adhered with a 3/4 inch (plus 3/4 inch or minus 1/16 inch) adhesive strip across the top portion on the reverse side of the note.

- Not be placed in a manner that interferes with the delivery address, rate markings, or postage.
- Not display a specific address or ZIP Code. References to general landmarks are permissible.

In addition to the physical standards stated above, the written and graphic characteristics of the information appearing on RPNs are considered when determining eligibility of mailpieces mailed at Standard Mail and Nonprofit Standard Mail rates.

In addition to the postage for the host piece, the rates for RPNs are as follows:

- \$0.005 (1/2cent) per piece for RPNs attached to discount First-Class Mail letter- or flat-size pieces.

- \$0.015 (1 1/2 cents) per piece for RPNs attached to Standard Mail or Periodicals letter- or flat-size pieces.

Again, note that current rate eligibility standards for discount First-Class Mail and Standard Mail letter-size mailpieces are staying the same.

This provisional service will be implemented on April 3, 2005, and expire on April 3, 2006. The Postal Service will give notice before expiration about whether the service will be allowed to expire, made permanent, or extended in some way.

Accordingly, the Postal Service hereby adopts the following regulations on an interim basis. Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 410 (a)), the Postal Service invites comments on the following revisions to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Administrative Practice and Procedure, Postal Service.

PART 111—[AMENDED]

- 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001-3011, 3201-3219, 3403-3406, 3621, 3626, 5001.

- 2. Revise the following sections of the Domestic Mail Manual (DMM) as set forth below:

C Characteristics

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C800 Automation-Compatible Mail

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C810 Letters and Cards

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7.0 REPOSITIONABLE NOTES

[Remove C810.7 and all subsections. This will be moved to the G900 section in order to change this service to an experiment.]

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G General Information

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G000 The USPS and Mailing Standards

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G040 Information Resources

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