

Issued in Burlington, Massachusetts, on February 14, 2006.

Ann C. Mollica,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

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BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2005-23375; Airspace
Docket No. 05-ACE-35]

Modification of Class E Airspace; Beatrice, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Beatrice, NE.

DATES: *Effective Date:* 0901 UTC, April 13, 2006.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE-520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329-2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 5, 2006 (71 FR 537). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 13, 2006. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on February 7, 2006.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 06-1644 Filed 2-22-06; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO-P-2006-0007]

RIN 0651-AC02

Clarification of Filing Date Requirements for Ex Parte and Inter Partes Reexamination Proceedings

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Interim rule.

SUMMARY: The United States Patent and Trademark Office (Office) is revising the rules of practice relating to the filing date requirements for *ex parte* and *inter partes* reexamination proceedings for consistency with the provisions of the patent statute governing *ex parte* and *inter partes* reexamination proceedings. The Office is specifically revising the rules to require that a request for *ex parte* reexamination or for *inter partes* reexamination must meet all the applicable statutory requirements before a filing date is accorded to the request for *ex parte* reexamination or for *inter partes* reexamination.

DATES: *Effective Date:* March 27, 2006.

Comment Deadline Date: To be ensured of consideration, written comments must be received on or before April 24, 2006. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *ac2/comments@uspto.gov*. Comments may also be submitted by mail addressed to: Box Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450, or by facsimile transmission to (571) 273-7710 marked to the attention of Kenneth M. Schor. 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 via the Office Internet Web site (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: By telephone—Kenneth M. Schor, at (571) 272-7710 or Robert J. Spar at (571) 272-7700; by mail addressed to U.S. Patent and Trademark Office, Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of Kenneth M. Schor; by facsimile transmission to (571) 273-7710 marked to the attention of Kenneth M. Schor; or by electronic mail message over the Internet addressed to *kenneth.schor@uspto.gov*.

SUPPLEMENTARY INFORMATION: The Office is revising the rules of practice in title 37 of the Code of Federal Regulations (CFR) to require that a request for *ex parte* reexamination or for *inter partes* reexamination must meet all the applicable statutory requirements in 35 U.S.C. 302 or 311 before a filing date is accorded to the request for *ex parte* reexamination or for *inter partes* reexamination. Thus, the Office is amending the rules to clearly require compliance with all the requirements of filing an *ex parte* reexamination request (set forth in 37 CFR 1.510(b)) before a filing date will be assigned to an *ex parte* reexamination request, and to clearly require compliance with all the requirements of filing an *inter partes* reexamination request (set forth in 37 CFR 1.915(b)) before a filing date will be assigned to an *inter partes* reexamination request.

Section 1.510 sets forth the requirements for the content of a request for *ex parte* reexamination. Section 1.915 sets forth the requirements for the content of a request for *inter partes* reexamination.

Former § 1.510(d) states that the filing date of a request for *ex parte* reexamination is “(1) The date on which the request including the entire fee for requesting reexamination is received in the Patent and Trademark Office; or (2) The date on which the last portion of the fee for requesting reexamination is received” (emphasis added). In like manner, former § 1.919(a) states that “[t]he filing date of a request for *inter partes* reexamination is the date on which the request satisfies the fee requirement of § 1.915(a)” (emphasis added). Given the former rule language, it may have appeared that compliance with the provisions of § 1.510(b) or

§ 1.915(b) is not required for obtaining a filing date in reexamination. However, 35 U.S.C. 302 (for *ex parte* reexamination) requires that “[t]he request must set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested.” Likewise, 35 U.S.C. 311(b) (for *inter partes* reexamination) requires that the request must “include the identity of the real party in interest” and “set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested.” Reexamination requesters do not always comply with these statutory requirements when submitting requests for reexamination. Furthermore, the information missing due to a lack of compliance with § 1.510(b) or § 1.915(b) is often relevant to the decision on whether to grant the request for reexamination. This presents a difficulty for the Office in view of the statutory requirements of 35 U.S.C. 303 (for *ex parte* reexamination) and 35 U.S.C. 312 (for *inter partes* reexamination) that the decision on the request must be issued within three months of the filing date of the request for reexamination because the process of notifying the requester of non-compliance and obtaining the missing information may very well extend beyond the three-month statutory deadline, or the information may be provided so close to the deadline that there is not sufficient time to properly evaluate it.

To address this problem, §§ 1.510(c) and (d) are revised to clearly require compliance with all the requirements of §§ 1.510(a) and (b) in order to obtain an *ex parte* reexamination filing date (and a decision on the request for reexamination). Likewise, § 1.919(a) is revised to clearly require compliance with all the requirements of § 1.915 in order to obtain an *inter partes* reexamination filing date. This revision should not have a significant impact on reexamination requesters because the filing date in a reexamination proceeding does not have the same legal significance as the filing date in other Office patent proceedings (*cf.* 35 U.S.C. 102(b)). The rules now simply clearly recite that the statutory requirements for a request for reexamination must be fulfilled before a filing date will be assigned. *See* 35 U.S.C. 302 and 35 U.S.C. 311.

Section-by-Section Discussion

Section 1.510: Section 1.510(c) is revised to provide that if a request for *ex parte* reexamination does not (1) include the fee for requesting *ex parte* reexamination and (2) comply with all

the requirements of § 1.510(b), then the person identified as requesting reexamination will be notified and will generally be given an opportunity to complete the request within a specified time. If the request is not completed within the time specified, the request will not be granted a filing date and no decision on the request will be made. The request may be placed in the patent file as a citation if it complies with the requirements of § 1.501. Deleted from former § 1.510(c) is the sentence: “If the fee for requesting reexamination has been paid but the defect in the request is not corrected within the specified time, the determination whether or not to institute reexamination will be made on the request as it then exists.”

Section 1.510(c) states that the requester will “generally” be given an opportunity to complete the request, because, in some instances, it may not be practical or even possible to provide an opportunity for completion of the request. For example, the request might be submitted anonymously (though such is not proper), or without an address, or with an inoperative address. In such instances, the requester would be notified of the incomplete request by publication in the *Official Gazette*, but an opportunity to complete the request would not be provided.

Section 1.510(d) is revised to provide that the filing date of the request for an *ex parte* reexamination request is the date on which the request satisfies all the requirements of §§ 1.510(a) and (b). Until that point, the request for reexamination is not complete.

Section 1.915: Section 1.915(d) is revised to provide that if a request for *inter partes* reexamination does not (1) include the fee for requesting *inter partes* reexamination and (2) comply with all the requirements of § 1.915(b), then the person identified as requesting reexamination will be notified and will generally be given an opportunity to complete the request within a specified time. If the request is not completed within the time specified, the request will not be granted a filing date and no decision on the request will be made.

Section 1.915(d) states that the requester will “generally” be given an opportunity to complete the request, because, in some instances, it may not be practical or even possible to provide an opportunity for completion of the request (see discussion of § 1.510(c)).

Section 1.915(d) stated, prior to the change made via the present rule making, that the reexamination proceeding may be vacated under this circumstance. Based on the revision to § 1.919(a) set forth immediately below, however, the *inter partes* request will

not be granted a filing date under this circumstance; thus, there will be no reexamination proceeding to vacate.

Section 1.919: Section 1.919(a) is revised to require that the request for *inter partes* reexamination must satisfy all the requirements for the request set forth in § 1.915, prior to assignment of a filing date. Until that point, the request for reexamination is not complete.

Rule Making Considerations

Administrative Procedure Act: The changes in this interim rule merely revise the rules of practice (37 CFR 1.510 and 1.915) to require that a request for *ex parte* reexamination or for *inter partes* reexamination meets the requirements in 35 U.S.C. 302 and 311 for a request for *ex parte* reexamination or for *inter partes* reexamination before a filing date is accorded to the request for *ex parte* reexamination or for *inter partes* reexamination. Therefore, these rule changes involve interpretive rules, or rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). *See Bachow Communications Inc. v. FCC*, 237 F.3d 683, 690 (DC Cir. 2001) (rules governing an application process are “rules of agency organization, procedure, or practice” and are exempt from the Administrative Procedure Act’s notice and comment requirement); *see also Merck & Co., Inc. v. Kessler*, 80 F.3d 1543, 1549–50, 38 USPQ2d 1347, 1351 (Fed. Cir. 1996) (the rules of practice promulgated under the authority of former 35 U.S.C. 6(a) (now in 35 U.S.C. 2(b)(2)) are not substantive rules (to which the notice and comment requirements of the Administrative Procedure Act apply)), and *Fressola v. Manbeck*, 36 USPQ2d 1211, 1215 (D.D.C. 1995) (“it is doubtful whether any of the rules formulated to govern patent and trade-mark practice are other than ‘interpretative rules, general statements of policy, * * * procedure, or practice.’”) (quoting C.W. Ooms, *The United States Patent Office and the Administrative Procedure Act*, 38 Trademark Rep. 149, 153 (1948)). Accordingly, prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law).

Regulatory Flexibility Act: As discussed previously, the changes in this interim rule involve rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C.

553(b)(A) (or any other law). As prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553 (or any other law) for the changes in this interim rule, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for the changes in this interim rule. 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 (August 4, 1999).

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

Paperwork Reduction Act: This interim rule involves information collection requirements which 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 OMB control number 0651-0033. The United States Patent and Trademark Office is not resubmitting any information collection 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 OMB control number 0651-0033. The principal impacts of the changes in this interim rule are to clarify the requirement for compliance with all the requirements of filing a reexamination before a filing date will be assigned to a reexamination.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office; and (2) Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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, and Biologics.

■ 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), unless otherwise noted.

■ 2. Section 1.510 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1.510 Request for *ex parte* reexamination.

* * * * *

(c) If the request does not include the fee for requesting *ex parte* reexamination required by paragraph (a) of this section and all of the parts required by paragraph (b) of this section, then the person identified as requesting reexamination will be so notified and will generally be given an opportunity to complete the request within a specified time. Failure to comply with the notice will result in the *ex parte* reexamination request not being granted a filing date, and will result in placement of the request in the patent file as a citation if it complies with the requirements of § 1.501.

(d) The filing date of the request for *ex parte* reexamination is the date on which the request satisfies all the requirements of paragraphs (a) and (b) of this section.

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■ 3. Section 1.915 is amended by revising paragraph (d) as follows:

§ 1.915 Content of request for *inter partes* reexamination.

* * * * *

(d) If the *inter partes* request does not meet all the requirements of subsection 1.915(b), the person identified as requesting *inter partes* reexamination will be so notified and will generally be given an opportunity to complete the formal requirements of the request within a specified time. Failure to comply with the notice will result in the *inter partes* reexamination request not being granted a filing date.

■ 4. Section 1.919 is amended by revising paragraph (a) to read as follows:

§ 1.919 Filing date of request for *inter partes* reexamination.

(a) The filing date of a request for *inter partes* reexamination is the date on which the request satisfies all the requirements for the request set forth in § 1.915.

* * * * *

Dated: February 16, 2006.

Jon W. Dudas,

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

[FR Doc. 06-1678 Filed 2-22-06; 8:45 am]

BILLING CODE 3510-16-P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302-17

[FTR Amendment 2006-01; FTR Case 2006-301]

RIN 3090-AI22

Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Tax Tables—2006 Update

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The Federal, State, and Puerto Rico tax tables for calculating the relocation income tax (RIT) allowance are being updated to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates. The Federal, State, and Puerto Rico tax tables contained in this rule are for calculating the 2006 RIT allowance to be paid to relocating Federal employees.

DATES: *Effective Date:* This final rule was effective on January 1, 2006.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (VIR), Room 4035, GSA Building, Washington, DC 20405, telephone (202) 208-7312, for information pertaining to status or publication schedules. For clarification of content, contact Patrick McConnell, Office of Governmentwide Policy, Travel Management Policy (MTT), Washington, DC 20405, telephone (202) 501-2362. Please cite FTR Amendment 2006-01, FTR case 2006-301.

SUPPLEMENTARY INFORMATION:

A. Background

Section 5724b of Title 5, United States Code, provides for reimbursement of substantially all Federal, State, and local income taxes incurred by a transferred Federal employee on taxable moving expense reimbursements. Policies and procedures for the calculation and