

DEPARTMENT OF THE TREASURY**Customs Service**

19 CFR Parts 7, 11, 12, 18, 19, 24, 54, 101, 102, 111, 114, 123, 128, 132, 134, 141, 145, 146, 148, 151, 152, 177, 181, and 191

[T.D. 95-29]

Technical Amendments to the Customs Regulations; Correction

AGENCY: Customs Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the document published in the **Federal Register** which made certain technical corrections to various authority citations to reflect amendments to the Harmonized Tariff Schedule of the United States made by the North American Free Trade Agreement (NAFTA) and the Uruguay Round of the General Agreement on Tariffs and Trade (GATT).

EFFECTIVE DATE: This correction is effective May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Gregory R. Vilders, Attorney, Regulations Branch, (202) 482-6930.

SUPPLEMENTARY INFORMATION:**Background**

On April 11, 1995, Customs published in the **Federal Register** (60 FR 18347) T.D. 95-29 to make certain technical corrections to various statutory authority citations contained in the Customs Regulations (19 CFR Chapter 1) to reflect amendments to the Harmonized Tariff Schedule of the United States (HTSUS) made by the North American Free Trade Agreement (NAFTA) and the Uruguay Round of the General Agreement on Tariffs and Trade (GATT).

This document corrects an error contained in T.D. 95-29. The error concerns the amendment to § 141.4. Because of a recent revision to § 141.4, the references in T.D. 95-29 to paragraph (a) and General Note 4 in § 141.4 did not accurately reflect the recently revised structure and text of § 141.4.

T.D. 94-51, published in the **Federal Register** (59 FR 30289) on June 13, 1994, regarding express consignments; formal and informal entries of merchandise and administrative exemptions revised § 141.4 on an interim basis. The revision renumbered the paragraphs and updated the authority citation to the Harmonized Tariff Schedule of the United States (HTSUS) from General Note 4 to General Note 13, which was the correct citation

at that time. This interim revision was finalized in T.D. 95-31, which was published in the **Federal Register** (60 FR 18983) on April 14, 1995. The technical correction amendment to § 141.4 in T.D. 95-29, inadvertently, did not take into account the revision to § 141.4 in T.D. 94-51. Accordingly, this document corrects that error.

Correction of Publication

Accordingly, the publication on April 11, 1995 of the final rule (T.D. 95-29) (60 FR 18347) is corrected as follows:

1. On page 18347, in the third column under the heading Part 141, the references to "Section 141.4(a)" and "General Note 4" are corrected to read "Section 141.4(b)(1)" and "General Note 13", respectively.

2. On page 18348, in the third column under Part 141, the second instruction is corrected to read "In § 141.4, the reference in paragraph (b)(1) to "General Note 13" is revised to read "General Note 16".

Dated: April 24, 1995.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 95-10558 Filed 4-28-95; 8:45 am]

BILLING CODE 4820-02-P

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

[Docket No. 950328079-5079-01]

RIN 0651-AA67

Revision of Affidavits Under 37 CFR 1.131

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice relating to submission of affidavits or declaration under 37 CFR 1.131(a) to implement the relevant provisions of the North American Free Trade Agreement Act and the Uruguay Round Agreements Act, respectively. The change will allow an inventor to show a completion of the invention in this country or a NAFTA or WTO member country before the filing of the application on which the U.S. patent issued or before the date of the foreign patent, or before the date of the printed publication.

EFFECTIVE DATE: This final rule is effective May 31, 1995.

FOR FURTHER INFORMATION CONTACT:

Hiram Bernstein by telephone at (703) 305-9285 or by mail addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231 marked to the attention of Mr. Bernstein, Office of the Deputy Assistant Commissioner for Patent Policy and Programs, or by FAX to (703) 308-6916.

SUPPLEMENTARY INFORMATION: Section 331 of Public Law 103-182, 107 Stat. 2057 (1993), the North American Free Trade Agreement Act, implementing the North American Free Trade Agreement (NAFTA), amended 35 U.S.C. 104 to provide that for the purpose of obtaining a patent, an applicant may establish a date of invention in the United States, or in a NAFTA member country (Canada and Mexico), which occurred after the date of implementation (i.e., December 8, 1993). Section 531 of Public Law No. 103-465, 108 Stat. 4809 (1994), the Uruguay Round Agreements Act, implementing the General Agreement on Tariffs and Trade (GATT), further amended 35 U.S.C. 104 to provide that for purposes of obtaining a patent, an applicant may establish a date of invention in the United States, or in a World Trade Organization (WTO) member country other than a NAFTA member country, that is no earlier than 12 months after the date of entry into force of the WTO agreement (i.e., January 1, 1996).

A notice of proposed rulemaking relating to Revision of Affidavits Under 37 CFR 1.131 was published in the **Federal Register**, 59 FR 49876 (September 30, 1994), and in the Official Gazette, 1167 Off. Gaz. Pat. Office 96 (October 25, 1994). No written comments were received in response to this notice.

The Office is amending 37 CFR 1.131(a), which is currently limited to facts showing a completion of the invention in the United States, to allow for a submission of facts in an affidavit or in a declaration that shows a completion of the invention in a NAFTA or in a WTO member country. The WTO is established under the GATT agreement to resolve disputes between signatories to the agreement. The facts presented must demonstrate a completion of the invention prior to the effective date of a reference thought to prevent the grant of a patent or overturn the patentability of a claim in a patent under reexamination.

No substantive change has been made in 37 CFR 1.131(a)(1) relating to a NAFTA or a WTO member country.

After further review and consideration of the proposed rule, the following modifications are made.

First, "person" recited in 37 CFR 1.131(a)(1) in regard to 37 CFR 1.42, 1.43 and 1.47 is being changed to "party" as 37 CFR 1.47(b) provides for corporate assignees to petition thereunder.

Second, reference to 35 U.S.C. 102 (a) or (e) and 35 U.S.C. 103 has been added to more clearly identify the rejections that can be overcome (35 U.S.C. 102 (a), (b), (d) and (e) are the only sections that recite the use of a domestic or foreign patent and a printed publication referred to in 37 CFR 1.131 as capable of being overcome as references—section (b) (35 U.S.C. 102(b)) is precluded by the terms of 37 CFR 1.131(a) and section (d) (35 U.S.C. 102(d) is applicant's own invention, MPEP 715).

Additionally, the Office recognizes that there is a potential conflict between existing 37 CFR 1.131(a) and 37 CFR 1.602(a). Section 1.131(a) prohibits affidavits or declarations thereunder when the same patentable invention, as defined in 37 CFR 1.601(n) (i.e., patentable indistinct inventions), is claimed. An interference under 35 U.S.C. 135(a), rather than antedating under 37 CFR 1.131(a), is generally the available remedy. However, 37 CFR 1.602(a) provides that when the applications or the application and the patent are owned by a single party, interferences are not declared or continued unless "good cause" is shown. This can result in a hardship where there is an issued patent that can no longer be amended as by filing a continuation-in-part application. Where there are two or more pending applications, the conflict can be avoided by filing a continuation-in-part application merging the conflicting inventions into a single application.

The Office proposed amending 37 CFR 1.131 to broaden its application to a single party where claimed inventions in a pending application or in a patent undergoing reexamination and a patent owned by the party are patentably indistinct but not identical. Under the proposed addition to 37 CFR 1.131, an affidavit or declaration could be filed by a party to overcome a 35 U.S.C. 103 rejection based on a 35 U.S.C. 102 (a) or (e) patent owned by that party, where the patent claimed an invention that was patentably indistinct, but not identical to an invention claimed in an application or patent undergoing reexamination.

The proposed addition to 37 CFR 1.131 would not affect the use of the issued patent in a rejection of the pending application or the patent undergoing reexamination based on double patenting. A Rule 1.131 affidavit

or declaration would continue to be inappropriate where a claim in a pending application or a patent undergoing reexamination is subject to a double patenting rejection under 35 U.S.C. 101 because the pending application or the patent undergoing reexamination claims the identical invention in the issued patent. However, where patentably indistinct but not identical inventions are claimed, an obvious type double patenting rejection can be avoided by filing an appropriate terminal disclaimer. In addition, petitions under 37 CFR 1.183 would be entertained for waiver of 37 CFR 1.131 requirements in appropriate instances where two pending applications claiming patentable indistinct but not identical inventions are held by a single party.

Third, the basis for requiring under proposed 37 CFR 1.131(a)(3) common ownership of the pending application or patent undergoing reexamination and the patent at the time the later invention was made rather than simply ownership by a single party as is used in 37 CFR 1.602(a). Also it is questioned whether the proposed 37 CFR 1.131(a)(3) and existing 37 CFR 1.78 (c) and (d) were consistent or in-part duplicative.

In view of the third consideration regarding the proposed 37 CFR 1.131(a)(3) relating to the date of common ownership between a pending application or a patent undergoing reexamination and an issued patent, further study of the proposal is deemed warranted and the proposed 37 CFR 1.131(a)(3) is not being adopted at this time.

Discussion of Specific Rules

Section 1.131(a) as amended, contains paragraphs (a)(1) and (a)(2). Previous paragraph (a) is now designated as (a)(1) and amended to allow a 37 CFR 1.131 affiant or declarant to rely upon facts occurring in a NAFTA member country or a WTO member country to show completion of the invention. The term "domestic" is being changed to "U.S." References to 35 U.S.C. 102 (a) and (e) and 35 U.S.C. 103 as the rejections to be overcome by the section have been added. The paragraph is being amended from a single sentence to three sentences.

Section 1.131(a)(2) is being added, as proposed, to provide that a date of completion of the invention may not be established before December 8, 1993, in a NAFTA country, or before January 1, 1996, in a WTO Member country other than a NAFTA country.

Other Considerations

This rule change is in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Executive Order 12612, and the Paperwork Reduction Act at 1980, 44 U.S.C. 3501 *et seq.* It has been determined that the rule changes are not significant for the purposes of Executive Order 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule change will not have a significant economic impact on a substantial number of small entities, Regulatory Flexibility Act, 5 U.S.C. 605(b), because the rule would affect only a small number of applications and would provide a streamlined and simplified procedure, eliminating the need for requesting waiver of the rules.

The Patent and Trademark Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States outlined in Executive Order 12612.

This rule change will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since no record keeping or reporting requirements within the coverage of the Act are placed upon the public.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and record keeping requirements.

For the reasons set forth in the preamble, and pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, Part 1 of Title 37 of the Code of Federal Regulations is amended as set forth below:

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. 6, unless otherwise noted.

2. Section 1.131 is amended by revising paragraph (a) to read as follows:

§ 1.131 Affidavit or declaration of prior invention to overcome cited patent or publication.

(a)(1) When any claim of an application or a patent under reexamination is rejected under 35 U.S.C. 102 (a) or (e), or 35 U.S.C. 103 based on a U.S. patent to another which

is prior art under 35 U.S.C. 102 (a) or (e) and which substantially shows or describes but does not claim the same patentable invention, as defined in 37 CFR 1.601(n), or on reference to a foreign patent or to a printed publication, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under 37 CFR 1.42, 1.43 or 1.47, may submit an appropriate oath or declaration to overcome the patent or publication. The oath or declaration must include facts showing a completion of the invention in this country or in a NAFTA or WTO member country before the filing date of the application on which the U.S. patent issued, or before the date of the foreign patent, or before the date of the printed publication. When an appropriate oath or declaration is made, the patent or publication cited shall not bar the grant of a patent to the inventor or the confirmation of the patentability of the claims of the patent, unless the date of such patent or printed publication is more than one year prior to the date on which the inventor's or patent owner's application was filed in this country.

(2) A date of completion of the invention may not be established under this section before December 8, 1993, in a NAFTA country, or before January 1, 1996, in a WTO Member country other than a NAFTA country.

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Dated: March 21, 1995.

Bruce A. Lehman,

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

[FR Doc. 95-10501 Filed 4-28-95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 122-1-6982a; FRL-5198-5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Santa Barbara County Nonattainment Area, Transportation Control Measure Replacement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the California State Implementation Plan (SIP) for ozone for Santa Barbara County, which was submitted to EPA on

November 14, 1994. This direct final approval action deletes a transportation control measure (TCM) from the federally-approved 1982 California ozone SIP and replaces it with a TCM from the state-adopted 1994 California ozone SIP. The intended effect of direct final approval of this SIP revision is to control emissions of ozone precursors in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or 1990 Act).

DATES: This direct final action is effective on June 30, 1995 unless adverse or critical comments are received by May 31, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State submittal and EPA's technical support document are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted SIP revision are available for inspection at the following locations:

Mobile Sources Section (A-2-1), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105
Environmental Protection Agency, Air Docket (6102), ANR 443, 401 "M" Street SW., Washington, DC 20460
California Air Resources Board, 2020 "L" Street, Sacramento, CA 92123
Santa Barbara County Air Pollution Control District, 26 Castillian Drive B-23, Goleta, CA 93117

FOR FURTHER INFORMATION CONTACT: Deborah Schechter, Mobile Sources Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1227.

SUPPLEMENTARY INFORMATION:

I. Background

On March 3, 1978, Santa Barbara County was designated an ozone nonattainment area by EPA under the provisions of the Clean Air Act, as amended in 1977. 43 FR 8964, 40 CFR 81.305. On December 31, 1982 the State of California submitted the 1982 ozone SIP for Santa Barbara County.

EPA approved California's 1982 ozone SIP for Santa Barbara County and published the **Federal Register** document on December 20, 1983 (48 FR 56215). The 1982 Santa Barbara County SIP, or Air Quality Attainment Plan (AQAP), submitted in 1982 included nine TCMs. One of these was the Goleta Transit Center, a transit center with limited park-and-ride capability in downtown Goleta. No emission

reduction credit was claimed for this TCM in the 1982 AQAP. According to the Santa Barbara County Association of Governments (SBCAG), the Goleta Transit Center and its ancillary park-and-ride lot were constructed in 1980 and operated until 1985. The facilities were closed and sold by the Santa Barbara Metropolitan Transit District (SBMTD) in October 1985 due to insufficient usage.

On November 15, 1990, the Clean Air Act Amendments of 1990 (1990 Act) were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. On November 14, 1994, the California Air Resources Board (CARB) submitted the 1994 ozone SIP to EPA. The portion of this SIP for the Santa Barbara County nonattainment area, the 1994 Clean Air Plan (CAP), stated that the TCMs in the 1994 CAP superseded those in the 1982 AQAP. The 1994 CAP was adopted by the Santa Barbara County Air Pollution Control District (SBAPCD) on November 2, 1994 and later by CARB on November 14, 1994.

On January 18, 1995, the SBAPCD provided a letter to EPA requesting expedited rulemaking action to replace the Goleta Transit Center TCM in the 1982 AQAP with TCM-5, Improve Commuter Public Transit Service, in the 1994 CAP.

In a letter to the State dated March 24, 1995, EPA found the submittal of TCM-5 complete.

II. Summary and Evaluation of SIP Revision

Section 176(c) of the Clean Air Act (CAA) prohibits any metropolitan planning organization (MPO) designated under section 134 of title 23 of the United States Code, from approving any transportation project, program, or plan which does not conform to a SIP approved under section 110 of the CAA. The federal transportation conformity regulation (40 CFR part 51, subpart T) implements the transportation-related requirements of section 176(c). Section 51.418 of the regulation requires the transportation plan and program to provide for the timely implementation of transportation control measures (TCMs) from the applicable federally-approved implementation plan. A TCM is defined in section 51.392 as any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentration of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions.