

any climb. The superintendent may authorize a maximum of 1500 climbers on Mount McKinley each year.

(b) Violating terms and conditions of the permit is prohibited.

Dated: April 8, 2008.

**Lyle Lavery,**

*Assistant Secretary, Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 2

[Docket No. PTO-T-2006-0011]

RIN 0651-AC05

#### Institution of a Fee To File on Paper a Request for Reconsideration of a Final Office Action in a Trademark Case

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Supplemental notice of proposed rule and withdrawal of proposed rule.

**SUMMARY:** In response to objections raised, the United States Patent and Trademark Office ("USPTO") withdraws its prior proposal to amend the Rules of Practice in Trademark Cases to require a request for reconsideration of an examining attorney's final refusal or requirement to be filed through the Trademark Electronic Application System ("TEAS") within three months of the mailing date of the final action. The USPTO instead proposes to require a fee of \$50 for filing a request for reconsideration on paper, whereas no fee would be required for a request for reconsideration filed through TEAS. The proposed fee would cover the USPTO's added costs of processing a request for reconsideration filed on paper, rather than through TEAS. Currently, no fee is required in connection with a request for reconsideration, filed either on paper or through TEAS.

**DATES:** Comments must be received by June 27, 2008 to ensure consideration.

**ADDRESSES:** The Office prefers that comments be submitted via electronic mail message to [TMRECONCOMMENTS@USPTO.GOV](mailto:TMRECONCOMMENTS@USPTO.GOV). Written comments may also be submitted by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, attention Cynthia C. Lynch; or by hand delivery to the

Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia, attention Cynthia C. Lynch; or by electronic mail message 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 on the Office's Web site at <http://www.uspto.gov>, and will also be available at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia.

**FOR FURTHER INFORMATION CONTACT:**

Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, by telephone at (571) 272-8742.

**SUPPLEMENTARY INFORMATION:** The USPTO withdraws its prior proposal to amend the Rules of Practice in Trademark Cases to shorten the deadline for filing a request for reconsideration of a final Office action and to mandate that such a request be filed through TEAS. The USPTO received comments about practical difficulties presented by the potentially shorter deadline, and has determined that, at this time, the benefits that would be achieved by the shortened deadline do not outweigh the objections expressed by some commenters.

Regarding the proposal to mandate filing through TEAS, the Office remains convinced that, as set forth in the previous notice, the filing of requests for reconsideration electronically, rather than on paper, promotes efficiency in processing the requests and, thereby, in the prosecution of the application. Paper-filed requests necessitate: (1) Manual scanning and uploading of the documents into the USPTO database, and (2) the creation of paper application file wrappers in which to store the original of the paper-filed request for those applications where all previous filings were through TEAS. In contrast, TEAS-filed requests are automatically uploaded into the USPTO database and require no manual scanning or creation of a file wrapper.

Paper-filed requests also introduce processing delays in addition to those described above. Many applicants simultaneously seek reconsideration of a final refusal and file an appeal to the Trademark Trial and Appeal Board ("TTAB"). Because the examining attorney loses jurisdiction over the application upon the filing of an appeal to the TTAB, this simultaneous pursuit

of reconsideration and appeal necessitates a remand by the TTAB to the examining attorney for a decision on the request for reconsideration. Where the applicant has filed the request on paper, the application is often remanded to the examining attorney before the request has been received and/or uploaded into the USPTO database, and so is not immediately available for the examining attorney's review and consideration. Thus, filing through TEAS expedites the examining attorney's notice of and access to the request, shortens pendency, requires less manual processing, and is more cost efficient for the USPTO.

While not disputing the efficiencies achieved by TEAS-filing, some commenters indicated their desire to avoid filing through TEAS when the request for reconsideration would include voluminous attachments that the applicant must scan for submission through TEAS. As an initial matter, the USPTO notes that by the request for reconsideration stage, an applicant has already received at least one non-final action and, in response thereto, has had an opportunity to submit available evidence in support of registration. A request for reconsideration is not intended as an opportunity for an applicant to put forth evidence that could have been provided in response to an initial action. As such, a legitimate need to attach voluminous evidence to a request for reconsideration should only arise where significantly different evidence is included in the final action, which the applicant wishes to rebut.

In addition, the USPTO notes that most filers are able to scan even voluminous evidence, and file it electronically. Nonetheless, in an effort to provide customer service to those who prefer to file requests for reconsideration on paper and therefore shift to the USPTO the burden of scanning and storing the request and all attachments, the USPTO proposes to permit such paper-filing upon payment of a fee in the amount of \$50. This fee for paper filing would cover the USPTO's added costs of processing a request for reconsideration filed on paper. No fee would be required for filing a request for reconsideration through TEAS. A TEAS Plus applicant who files a request for reconsideration on paper would also be responsible for the fee for the loss of TEAS Plus status pursuant to §§ 2.23(b) and 2.23(a)(1)(i).

References in this notice to "the Act," "the Trademark Act," or "the statute" refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, as amended.

## Discussion of Specific Rules

The Office proposes to revise § 2.64(b) and § 2.6(a).

## Rule Making Requirements

*Executive Order 13132:* This rule 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 has been determined not to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

*Regulatory Flexibility Act:* This supplemental notice proposes requiring a \$50 fee for the filing of a request for reconsideration on paper. The USPTO estimates that approximately 3,685 of the estimated 33,500 requests for reconsideration filed annually will be filed on paper and will incur the \$50 fee.

A request for reconsideration is an optional, rather than a mandatory, filing in the course of trademark prosecution. An applicant may therefore choose not to request reconsideration after a final action, and thereby avoid paying the \$50 fee. Moreover, no fee will be required for a request for reconsideration filed through TEAS, so even where an applicant chooses to file a request for reconsideration, the applicant will not be required to pay the \$50 fee if the applicant files electronically, rather than on paper.

Therefore, the changes proposed in this notice will not have a significant economic impact on a substantial number of small entities.

*Paperwork Reduction Act:* This supplemental notice of proposed rule making 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 notice was submitted to OMB for review in conjunction with the original notice of proposed rule making. That submission was pre-approved by OMB under OMB Control Number 0651-0050 on June 25, 2007.

This supplemental notice proposes to allow applicants to file their requests for reconsideration on paper, as well as electronically, with the addition of a \$50 fee for a paper filing.

The current estimate remains the same for 33,500 requests for reconsideration filings per year. As a result of this supplemental notice, the USPTO estimates that 3,685 of the 33,500 requests for reconsideration will

be filed in paper and will incur the \$50 fee, for an estimated total burden increase of \$184,250 per year. The agency believes that it will take the same amount of time to complete the request for reconsideration whether they are filed in paper or filed electronically, and therefore does not expect an increase in the burden hours as a result of this rule. The USPTO plans to submit to OMB the addition of the paper filings and the associated fee cost adjustment to the 0651-0050 collection at the final rule making stage.

The currently approved estimated annual reporting burden for OMB Control Number 0651-0050 Electronic Response to Office Action and Preliminary Amendment Forms is 117,400 responses, 19,958 burden hours, and \$0 in annualized non-hour costs. The estimated time per response is 10 minutes. The time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information is included in the estimate. The collection is approved through April of 2009.

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 the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 (*Attn:* Cynthia C. Lynch), and to 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 (*Attn:* Desk Officer for the 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.

*Unfunded Mandates:* The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or

by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, and tribal governments or the private sector.

## List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Trademarks.

For the reasons stated, 37 CFR part 2 is proposed to be amended as follows:

## PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR part 2 continues to read as follows:

**Authority:** 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

2. Amend § 2.6 by adding paragraph (a)(2) to read as follows:

### § 2.6 Trademark fees.

\* \* \* \* \*

(a)

\* \* \*

(2) For filing on paper a request for reconsideration of a final action—\$50.00.

\* \* \* \* \*

3. Amend § 2.64 by revising paragraph (b) to read as follows:

### § 2.64 Final action.

\* \* \* \* \*

(b) During the period between a final action and expiration of the time for filing an appeal, the applicant may request reconsideration of the final action. If filed on paper, the request for reconsideration must be accompanied by the fee required by § 2.6, or it will not be examined, and no opportunity to correct the deficiency will be permitted. The filing of a request for reconsideration will not extend the time for filing an appeal or petitioning the Director, but normally the examiner will reply to a request for reconsideration before the end of the six-month period if the request is filed within three months after the date of the final action. Amendments accompanying requests for reconsideration after final action will be entered if they comply with the rules of practice in trademark cases and the Act of 1946.

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Dated: April 22, 2008.

**Jon W. Dudas,**

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

[FR Doc. E8-9216 Filed 4-25-08; 8:45 am]

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