DEPARTMENT OF COMMERCE
Patent and Trademark Office
37 CFR Part 41
[Docket No.: PTO–P–2008–0054]

Clariﬁcation of the Effective Date Provision in the Final Rule for Ex Parte Appeals


ACTION: Interpretation and effective date clariﬁcation.

SUMMARY: On June 10, 2008, the United States Patent and Trademark Office (Office) published the ﬁnal rule that amends the rules governing practice before the Board of Patent Appeals and Interferences (BPAI) in ex parte patent appeals. The effective date provision in the ﬁnal rule states that the effective date is December 10, 2008, and the ﬁnal rule shall apply to all appeals in which an appeal brief is ﬁled on or after the effective date. The ﬁnal rule requires, in part, appeal briefs in a new format relative to the format required prior to the rule revision. The Ofﬁce has received appeal briefs in the new format under the ﬁnal rule before the effective date. The Ofﬁce will not hold an appeal brief as non-compliant solely for following the new format even though it is ﬁled before the effective date.

Accordingly, appeal briefs ﬁled before December 10, 2008, must either comply with current 37 CFR 41.37 (in effect before December 10, 2008) or revised 37 CFR 41.37 (in effect on or after December 10, 2008). Appeal briefs ﬁled on or after December 10, 2008, must comply with the revised 37 CFR 41.37. A certiﬁcate of mailing or transmission in compliance with 37 CFR 1.8 will be applicable to determine whether the appeal brief was ﬁled prior to the effective date in order to determine which rule applies. For any appeal brief ﬁled in the new format under revised 37 CFR 41.37, the Ofﬁce will provide an examiner’s answer in the new format under revised 37 CFR 41.39 if the appeal is maintained.

Similarly, a notice of appeal ﬁled before December 10, 2008, in compliance with revised 37 CFR 41.31 (in effect on or after December 10, 2008) will be accepted by the Ofﬁce. Thus a notice of appeal ﬁled before December 10, 2008, must either comply with current 37 CFR 41.31 (in effect before December 10, 2008) or revised 37 CFR 41.31 (in effect on or after December 10, 2008), regardless of the date of ﬁling of the appeal brief. However, a notice of appeal ﬁled on or after December 10, 2008, must comply with the revised 37 CFR 41.31 (e.g., the notice of appeal must be signed in accordance with 37 CFR 1.33(b)).

The Ofﬁce has held a few appeal briefs ﬁled in the new format prior to the publication of this clariﬁcation notice non-compliant. Any appellant who has received a notice of non-compliant appeal brief may request that the notice of non-compliant appeal brief be withdrawn if the sole reason for non-compliance is that the appeal brief was presented in the new format.


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

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FEDERAL COMMUNICATIONS COMMISSION
47 CFR Part 73
[FCC 08–205; MB Docket No. 04–219; RM–10966]

Radio Broadcasting Services; Evergreen, AL and Shalimar, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial.

SUMMARY: This document denies an Application for Review by Qantum of Fort Walton Beach License Company, LLC directed to the Memorandum Opinion and Order in this proceeding. With this action, the proceeding is terminated.


FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Memorandum Opinion and Order in MB Docket No. 04–219, adopted September 5, 2008, and released October 31, 2008. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission’s copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or http://www.BCPIWEB.com. The Commission will not send a copy of this Memorandum Opinion and Order pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability. This document does not contain new or modiﬁed information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modiﬁed “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–190, see 44 U.S.C. 3506(c)(4).

List of Subjects in 47 CFR Part 73
Radio, Radio broadcasting.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.

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