

Spatial Planning initiatives, and their linkages to the national system of MPAs. The Committee will hear from two panels of MPA stakeholders: one on regional MPA issues in the South Atlantic, and one on cultural MPA resources. The agenda is subject to change. The latest version will be posted at <http://www.mpa.gov>.

**Donna Wieting,**

*Director, Office of Ocean and Coastal Resource Management.*

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**BILLING CODE 3510-22-M**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

[Docket No.: PTO-P-2010-0029]

#### Request for Comments on Proposed Change To Missing Parts Practice

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

**ACTION:** Request for comments.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), in response to a number of requests to reduce the costs due one year after filing a provisional application, is considering a change that would effectively provide a 12-month extension to the 12-month provisional application period (creating a net 24-month period). This change would be implemented through the missing parts practice in nonprovisional applications. Currently the missing parts practice permits an applicant on payment of a surcharge to pay the up-front filing fees and submit an executed oath or declaration after the filing of a nonprovisional application within a two-month time period set by the USPTO that is extendable on payment of extension of time fees for an additional five months. Under the proposal, applicants would be permitted to file a nonprovisional application with at least one claim within the 12-month statutory period after the provisional application was filed, pay the basic filing fee, and submit an executed oath or declaration. In addition, the nonprovisional application would need to be in condition for publication and applicant would not be able to file a nonpublication request. Applicants would be given a 12-month period to decide whether the nonprovisional application should be completed by paying the required surcharge and the search, examination and any excess claim fees due within that 12-month period. The proposal would benefit applicants by permitting additional time

to determine if patent protection should be sought at a relatively low cost and by permitting applicants to focus efforts on commercialization during this period. The proposal would benefit the USPTO and the public by adding publications to the body of prior art, and by removing from the USPTO's workload those nonprovisional applications for which the applicants have decided not to pursue examination. Importantly, the extended missing parts period would not affect the 12-month priority period provided by the Paris Convention for the Protection of Industrial Property and, thus, any foreign filings would still need to be made within 12 months of the filing date of the provisional application if applicant wishes to rely on the provisional application in the foreign-filed application.

**Comment Deadline Date:** To be ensured of consideration, written comments must be received on or before June 1, 2010.

**ADDRESSES:** Written comments should be sent by electronic mail message over the Internet addressed to [extended\\_missing\\_parts@uspto.gov](mailto:extended_missing_parts@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, marked to the attention of Eugenia A. Jones. Although comments may be submitted by mail, the USPTO prefers to receive comments via the Internet.

The written 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, 22314, and will be available via the USPTO 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:**

Eugenia A. Jones, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at (571) 272-7727, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of Eugenia A. Jones.

**SUPPLEMENTARY INFORMATION:**

Applicants have a one-year period from the filing date of a provisional application to file a corresponding nonprovisional application in order to claim the benefit of the provisional

application. Roughly fifty percent of provisional applications are abandoned without the subsequent filing of nonprovisional applications claiming their benefit. Many applicants have expressed that a longer period of time to draft a complete set of claims and pay fees would facilitate their efforts to determine whether their inventions have commercial viability, and would enable more informed and economically efficient decision making for applicants considering filing nonprovisional applications claiming benefit of prior provisional applications. Moreover, these same applicants have expressed that they would be willing to commit to 18-month publication of the invention disclosed in their provisional applications benefiting from any extension period, as well as any nonprovisional applications later claiming benefit of such provisional applications.

In order to claim the benefit of a prior provisional application, the statute requires a nonprovisional application filed under 35 U.S.C. 111(a) to be filed within 12 months after the date on which the corresponding provisional application was filed. See 35 U.S.C. 119(e). The proposed change would not alter this statutory requirement but would allow applicants to more easily avail themselves of the benefits of missing parts practice in nonprovisional applications.

Under the current missing parts practice, if a nonprovisional application filed under 35 U.S.C. 111(a) has been accorded a filing date but does not include the basic filing fee, the search fee, the examination fee, or an oath or declaration under 37 CFR 1.63, the USPTO will send a missing parts notice and set a time period for the applicant to submit the missing items and pay any required surcharge to avoid abandonment. See 37 CFR 1.53(f). If excess claims fees, a multiple dependent claim fee, and/or an application size fee are required and such fees have not been paid, then these fees are also required to be paid in response to a missing parts notice. Currently, the time period set forth in a missing parts notice is two months with extensions of time of up to five months under 37 CFR 1.136(a) being available.

The USPTO is requesting public comment on whether the missing parts practice should be changed to provide applicants with an extended time period to reply to a missing parts notice requiring fees in a nonprovisional application filed under 35 U.S.C. 111(a) that claims the benefit of a provisional application under the conditions that the basic filing fee for the

nonprovisional application has been paid, an executed oath or declaration under 37 CFR 1.63 has been filed, a nonpublication request has not been filed, and the application is in condition for publication. A benefit of such extension would be increased use of the 18-month publication system resulting from: (1) Additional nonprovisional applications being filed that would not have been filed without the ability to have 12 months to reply to a missing parts notice with no extension of time fees being required; and (2) nonprovisional applications being filed without a nonpublication request so that applicant will be given the 12-month time period to reply to a missing parts notice. A second benefit is added flexibility for applicants who may otherwise be forced to expend resources completing nonprovisional applications that may prove unnecessary given an additional year of commercialization efforts. Providing a longer time period to reply to a missing parts notice would give applicants more time to ascertain the value of their inventions, thereby helping applicants to decide whether to incur the additional costs associated with pursuing patent rights. Applications not completed as nonprovisional applications additionally benefit the USPTO and all other users of the patent system, by removing unnecessary workload from the agency. A third benefit is better targeting of applicant resources to commercialization efforts at critical time periods, which efforts can ultimately result in creation of jobs as well as new products and services. This sequencing of effort in turn will lead to more efficient and purposeful engagement with the USPTO for those applications that are filed and completed as nonprovisional applications.

The percentage of provisional applications that are subsequently relied upon in a nonprovisional application has been declining over time, leaving a higher percentage of provisional applications as abandoned, unrelieved upon applications. In 2008, 143,120 provisional applications were filed. Thereafter, 72,792 nonprovisional or international applications were filed that claimed the benefit of one or more of the provisional applications filed in 2008 (or 50.8 percent of the provisional applications). In 2007, 132,581 provisional applications were filed. Thereafter, 75,330 nonprovisional or international applications were filed that claimed the benefit of one or more of the provisional applications filed in 2007 (or 56.8 percent of the provisional applications). In 2006, 121,471

provisional applications were filed. Thereafter, 73,136 nonprovisional or international applications were filed that claimed the benefit of one or more of the provisional applications filed in 2006 (or 60.2 percent of the provisional applications). In 2005, 111,753 provisional applications were filed. Thereafter, 68,511 nonprovisional or international applications were filed that claimed the benefit of one or more of the provisional applications filed in 2005 (or 61.3 percent of the provisional applications). In 2004, 102,268 provisional applications were filed. Thereafter, 63,146 nonprovisional or international applications were filed that claimed the benefit of one or more of the provisional applications filed in 2004 (or 61.7 percent of the provisional applications). For provisional applications filed from 1998 to 2003, the percentage of provisional applications relied upon in a subsequent application ranged from 61.2 to 63.2 percent.

Currently, some applicants take advantage of the missing parts practice to file nonprovisional applications without complete claim sets by omitting an executed oath or declaration or failing to pay the search and examination fees up front. Such filings result in a notice to file missing parts which must be replied to in order to complete the application prior to docketing for examination. A subset of these applicants then file a continuing application claiming the benefit of the first-filed nonprovisional application that claimed the benefit of the prior provisional application, rather than a reply to the notice to file missing parts, in order to effectively extend the time period to complete the nonprovisional application. The current proposal to provide a time period of twelve months for an applicant to reply to a missing parts notice under certain conditions seeks to provide applicants with a streamlined alternative to this practice by eliminating the need to refile the application and to pay significant extension of time fees.

Similarly, applicants who file several nonprovisional patent applications based on a number of provisional applications may fail to have sufficient focus on what they deem to be their most important applications. In addition, by failing to prioritize USPTO efforts on the nonprovisional applications deemed most important by applicants, greater delay in the processing and examination of all nonprovisional applications by the USPTO occurs. The current proposal would help applicants focus on their most important applications and conserve USPTO resources.

In order for an applicant to be provided a 12-month (non-extendable) time period to reply to a missing parts notice, the applicant would need to satisfy the following conditions: (1) The nonprovisional application filed under 35 U.S.C. 111(a) must claim the benefit of a prior-filed provisional application; (2) the basic filing fee must have been paid (in the nonprovisional application); (3) an executed oath or declaration under 37 CFR 1.63 must have been filed; (4) applicant must not have filed a nonpublication request, or the applicant must have filed a request to rescind a previously filed nonpublication request; and (5) the application must be in condition for publication as provided in 37 CFR 1.211(c). After an applicant timely replies to the missing parts notice within the 12-month time period and the nonprovisional application is completed, the nonprovisional application would be placed in the examination queue based on the actual filing date of the nonprovisional application. Therefore, there would be no change made in the order in which applications are examined as a result of the current proposal.

An applicant who has filed a provisional application with a complete disclosure and high quality application papers (e.g., papers that satisfy the requirements of 37 CFR 1.52) would, in most cases, be able to file a nonprovisional application with little additional effort and expense. In addition to the requirements of a provisional application, a nonprovisional application requires at least one claim and an executed oath or declaration under 37 CFR 1.63. Thus, for example, where a provisional application was filed without any claims, the applicant would need to: (1) Draft at least one claim and file the nonprovisional application using essentially a copy of the provisional application papers (e.g., specification and drawings), with minor revisions to add the claim(s) at the end of the specification and the reference to the prior-filed provisional application in the first sentence of the specification; (2) submit an executed oath or declaration under 37 CFR 1.63; and (3) submit the basic filing fee. A preliminary amendment adding additional claims could be submitted along with the reply to the missing parts notice. Currently, the small entity basic filing fee for a utility application is \$165.00, or \$82.00 if filed electronically using the USPTO's electronic filing system (EFS-Web). The non-small entity basic filing fee for a utility application is \$330.00. To

complete the application for examination, the remainder of the filing fees and the required surcharge (\$65.00 for small entities and \$130.00 for other applicants) would be due within the 12-month time period set in the missing parts notice. Thus, an additional \$445.00 for small entities and \$890.00 for other applicants would be due for payment of the surcharge and the search and examination fees (plus any required excess claims fees and application size fee). Furthermore, the publication fee would not be required until mailing of a notice of allowance (unless early publication is requested).

Applicants are reminded that the disclosure of an invention in a provisional application should be as complete as possible because the claimed subject matter in the later-filed nonprovisional application must have support in the provisional application in order for the applicant to obtain the benefit of the filing date of the provisional application. Applicants are also advised that the extended missing parts period would not affect the 12-month priority period provided by the Paris Convention for the Protection of Industrial Property (Paris Convention) and, thus, any foreign filings would still need to be made within 12 months of the filing date of the provisional application if applicant wishes to rely on the provisional application in the foreign-filed application.

As discussed, the USPTO would require the nonprovisional application to be in condition for publication. In addition, the USPTO would publish the application promptly after the expiration of eighteen months from the earliest filing date for which a benefit is sought. Thus, if there are informalities in the application papers that need correction for the application to be in condition for publication (such as the specification pages contain improper margins or line spacing or the drawings are not acceptable because they are not electronically reproducible), the USPTO would still send a missing parts notice that sets a two-month (extendable) time period (not the 12-month extended missing parts period) for the applicant to correct the informalities as well as submit any missing items or required fees.

The USPTO is also considering offering applicants an optional service of having an international style search report prepared during the 12-month extended missing parts period. The optional service would provide the applicant with information concerning the state of the prior art and may be useful in determining whether to complete the application and the claims

to pursue if the application is completed. The search report that would be prepared would be similar to the search report that is prepared for international applications. See PCT Rule 43 and *Manual of Patent Examining Procedure* (MPEP) § 1844. The fee for this service would be set, through rule making, to recover the estimated average cost of providing the service and is anticipated to be consistent with the current cost of conducting an international search. See 35 U.S.C. 41(d)(2) and 37 CFR 1.445(a)(2). It should be noted that if applicant decides to file a reply to the missing parts notice and complete the nonprovisional application after having received such a search report, the applicant would still be required to pay the search fee (set forth in 35 U.S.C. 41(d)(1) and 37 CFR 1.16) with the reply to the missing parts notice, and the examiner would still conduct the search that is currently done as part of the examination of nonprovisional applications. See MPEP §§ 704.01 and 904-904.03. This is analogous to international applications where applicant is required to pay the search fee set forth in 37 CFR 1.445(a)(2) and the USPTO will conduct a search and prepare an international search report when the USPTO is the International Searching Authority; and then, after the international application enters the national stage in the United States, applicant is required to pay the national stage search fee set forth 37 CFR 1.492(b) and the examiner will conduct a search as part of the examination of the application.

Any patent term adjustment (PTA) accrued by an applicant based on certain administrative delays by the USPTO is offset by a reduction for failing to reply to a notice by the USPTO within three months. See 37 CFR 1.704(b). Thus, if an applicant replies to a notice to file missing parts more than three months after mailing of the notice, the additional time would be treated as an offset to any positive PTA that will be accrued by applicant. The USPTO envisions that no change would be made to the current regulations (including the patent term adjustment regulations) except to provide for the fee for the optional service of an international style search report, if the USPTO decides to implement the proposed change to the missing parts practice.

The USPTO is publishing this request for comments to gather public feedback on, and to determine the level of interest in, the proposed change to missing parts practice as well as the optional service to provide a search report during the

extended missing parts period discussed in this notice. Comments or suggestions are solicited on whether or how the USPTO should revise the missing parts practice.

Dated: March 29, 2010.

**David J. Kappos,**

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

[FR Doc. 2010-7520 Filed 4-1-10; 8:45 am]

**BILLING CODE 3510-16-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-863]

#### **Honey from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* April 2, 2010.

**FOR FURTHER INFORMATION CONTACT:** FOR FURTHER CONTACT INFORMATION:

Catherine Bertrand, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3207.

**SUPPLEMENTARY INFORMATION:**

#### **Background**

On December 1, 2009, the Department of Commerce ("the Department") published a notice of opportunity to request an administrative review of the antidumping duty order on honey from the People's Republic of China ("PRC"). See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 62743 (December 1, 2009). On December 31, 2009, American Honey Producers Association and the Sioux Honey Association (collectively "Petitioners") requested that the Department conduct an administrative review of the exports to the United States of 51 companies for the period December 1, 2008, through November 30, 2009. Those companies are: Ahcof Industrial Development Corp., Ltd.; Alfred L. Wolff (Beijing) Co. Ltd.; Anhui Honghui Foodstuff (Group) Co., Ltd.; Anhui Honghui Import&Export Trade Co., Ltd.; Anhui Cereals Oils and Foodstuffs I/E (Group) Corporation; Anhui Native Produce Imp& Exp Corp.; APM Global Logistics (Shanghai) Co.; Baiste Trading Co., Ltd.;