

collection) and released. The data gathered from this project, in addition to Project 2, will provide information on the ecology of juvenile salmonids in estuarine environments, their feeding habits, and how they differ between systems with permanently-open (Tomales Bay) versus seasonally-closed (Pescadero Creek lagoon) estuaries/lagoons.

Project 4 examines smolt production in the Lagunitas Creek watershed by analyzing collected otoliths to determine where smolts that survived to breed as adults reared as juveniles. The otoliths will be obtained from carcasses encountered during annual spawner surveys conducted by the National Park Service and Marin Municipal Water District. Dr. Carlson proposes to conduct additional surveys in order to augment the otolith collection. The results of this project could provide important information on the habitat attributes associated with high productivity areas and could help identify areas of poor productivity that might be candidate sites for habitat restoration.

#### *Permit 15548*

Thomas R. Payne and Associates is seeking a ten-year permit to take listed adult and juvenile CCC steelhead while collecting biological data. The purpose of the research is to monitor the distribution, relative abundance and diversity, the condition and general health of fish populations and to describe the existing habitat conditions of Suisun Creek, Green Valley Creek, and Ledge Creek in Solano County and Napa County, California. The research would benefit CCC steelhead by producing data to support development of the Solano Habitat Conservation Plan under development as a requirement of a March 1999 biological opinion for the Solano Project Water Service Contract Renewal issued by the U.S. Fish and Wildlife Service. Monitoring activities will take place between July and October at multiple sites in the three creeks using a backpack electrofisher to stun and net fish. Captured fish will be anesthetized prior to handling and then identified, counted, measured, weighed, and released. The researchers do not intend to kill any captured fish but a small number may die as an unintended result of the research activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made

until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: December 2, 2010.

**Therese Conant,**

*Acting Chief, Endangered Species Division,  
Office of Protected Resources, National  
Marine Fisheries Service.*

[FR Doc. 2010-30908 Filed 12-7-10; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

[Docket No.: PTO-P-2010-0071]

#### **Pilot Program for Extended Time Period To Reply to a Notice To File Missing Parts of Nonprovisional Application**

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

**ACTION:** Notice.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) previously published a notice requesting comments on a proposed change to missing parts practice in nonprovisional applications. The USPTO has considered the comments and is implementing a pilot program (Extended Missing Parts Pilot Program) in which an applicant can request a twelve-month time period to pay certain fees and to reply to a Notice to File Missing Parts of Nonprovisional Application. Under the Extended Missing Parts Pilot Program, applicant must file a nonprovisional application within twelve months of the filing date of a provisional application and directly claim the benefit of the provisional application, as well as submit a certification and request to participate in the Extended Missing Parts Pilot Program with the nonprovisional application. In addition, applicant must not file a nonpublication request. Applicant will be given a twelve-month period to decide whether the nonprovisional application should be completed by paying the search fee, the examination fee, any excess claim fees, and the surcharge (\$130.00 for non-small entity or \$65.00 for small entity) for the late submission of the search fee and examination fee within that twelve-month period. The nonprovisional application will be published under the existing eighteen-month publication provisions. Therefore, applicant should also submit the basic filing fee, an executed oath or declaration, and application papers that are in condition for publication, on filing of the application with the request to

participate in the pilot. If the basic filing fee, an executed oath declaration, and/or application papers that are in condition for publication are not submitted with the application and the request to participate in the pilot, applicant will need to submit these items within a two-month (extendable) time period. In view of the comments, the USPTO is cautiously moving forward by implementing the proposed procedure as a pilot program. Specifically, the pilot program will require applicant to submit a certification and request to participate in the pilot program, rather than automatically applying the procedure to all applicants. The USPTO is providing a certification and request form that includes educational information regarding domestic benefit claims, foreign filings, patent term adjustment (PTA) effects, the need for a complete disclosure of the invention, potential increase in fees, and the benefits of submitting a complete set of claims. In addition, the USPTO is implementing a number of educational initiatives to assist independent inventors and other applicants. The Extended Missing Parts Pilot Program will 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 Extended Missing Parts Pilot Program will 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 applicants later decide not to pursue examination. Applicants are advised that the extended missing parts period does not affect the twelve-month priority period provided by the Paris Convention for the Protection of Industrial Property. Thus, any foreign filings must still be made within twelve months of the filing date of the provisional application if applicant wishes to rely on the provisional application in the foreign-filed application or if protection is desired in a country requiring filing within twelve months of the earliest application for which rights are left outstanding in order to be entitled to priority.

**DATES:** *Effective Date:* December 8, 2010.

*Duration:* The Extended Missing Parts Pilot Program will run for twelve months from its effective date. Therefore, any certification and request to participate in the Extended Missing Parts Pilot Program must be filed before December 8, 2011. The USPTO may extend the pilot program (with or

without modifications) depending on the feedback received and the effectiveness of the pilot program.

**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.

Inquiries regarding this notice may be directed to the Office of Patent Legal Administration, by telephone at (571) 272-7701, or by electronic mail at [PatentPractice@uspto.gov](mailto:PatentPractice@uspto.gov).

**SUPPLEMENTARY INFORMATION:** The USPTO published a notice requesting comments on a proposed change to missing parts practice in nonprovisional applications. See *Request for Comments on Proposed Change to Missing Parts Practice*, 75 FR 16750 (April 2, 2010), 1353 *Off. Gaz. Pat. Office* 223 (April 27, 2010). Specifically, the USPTO requested comments on whether the missing parts practice should be changed to provide applicants with an extended time period to reply to a Notice to File Missing Parts requiring fees in a nonprovisional application filed under 35 U.S.C. 111(a) that claims the benefit of a provisional application and meets certain conditions. The request for comments identified a number of potential benefits of such an extended time period to reply to a missing parts notice, including increased use of the eighteen-month publication system, more time for applicants to ascertain the value of their inventions and focus on commercialization efforts, and removal of applications from the USPTO's workload.

The USPTO received over forty comments from intellectual property organizations, universities, industry, a law firm, individual patent practitioners, and the general public. The USPTO acknowledges and appreciates the many comments that were submitted from the intellectual property community. The comments from those who will benefit from the extended time period were generally positive. Many comments expressed concerns over the potential for a loss of rights by some applicants, such as independent inventors. The USPTO has considered the written comments including those that raised concerns or provided suggestions. The USPTO is implementing a change to missing parts practice in nonprovisional applications

as a pilot program (*i.e.*, Extended Missing Parts Pilot Program). The pilot program will allow the USPTO to proceed with caution, while placing emphasis on awareness and education of the public regarding the program. The USPTO will also be better able to evaluate the effectiveness of the program and make modifications or eliminate the program as deemed appropriate. Furthermore, those applicants who do not wish to participate in the pilot program should not be affected by the pilot program and do not need to change their practices. The pilot program will require applicant to submit a certification and request to participate in the pilot program, rather than automatically applying the procedure to all applicants. The USPTO is providing a certification and request form that includes educational information regarding domestic benefit claims, foreign filings, patent term adjustment (PTA) effects, the need for a complete disclosure of the invention, potential increase in fees, and the benefits of submitting a complete set of claims. In addition, the USPTO is implementing a number of educational initiatives to assist independent inventors and other applicants. Applicants who do not submit a request to participate in the pilot program will continue to receive a Notice to File Missing Parts of Nonprovisional Application that sets a two-month (extendable) time period to reply to the notice in an application that has been accorded a filing date but has items that are missing.

The USPTO cautions all applicants that, 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 twelve months after the date on which the corresponding provisional application was filed. See 35 U.S.C. 119(e). It is essential that applicants understand that the Extended Missing Parts Pilot Program cannot and does not change this statutory requirement.

It is noted that this notice merely describes agency policy and procedures, and does not involve substantive rule making. While the missing parts practice in nonprovisional applications is set forth to some extent in 37 CFR 1.53(f), the rule does not set forth the specific time period that must be given in the notice to applicant that certain fees or an oath or declaration are required.

**I. Requirements:** In order for an applicant to be provided a twelve-month (non-extendable) time period to pay the search and examination fees and any required excess claims fees in

response to a Notice to File Missing Parts of Nonprovisional Application under the Extended Missing Parts Pilot Program, the applicant must satisfy the following conditions: (1) Applicant must submit a certification and request to participate in the Extended Missing Parts Pilot Program with the nonprovisional application on filing, preferably by using Form PTO/SB/421 entitled "Certification and Request for Extended Missing Parts Pilot Program"; (2) the application must be an original nonprovisional utility or plant application filed under 35 U.S.C. 111(a) within the duration of the pilot program; (3) the nonprovisional application must directly claim the benefit under 35 U.S.C. 119(e) and 37 CFR 1.78 of a prior provisional application filed within the previous twelve months; the specific reference to the provisional application must be in the first sentence(s) of the specification following the title or in an application data sheet under 37 CFR 1.76 (*see* 37 CFR 1.78(a)(5)); and (4) applicant must not have filed a nonpublication request.

As required for all nonprovisional applications, applicant will need to satisfy filing date requirements and publication requirements. In accordance with 35 U.S.C. 122(b), the USPTO will publish the application promptly after the expiration of eighteen months from the earliest filing date to which benefit is sought. Therefore, the nonprovisional application should also be in condition for publication as provided in 37 CFR 1.211(c). The following are required in order for the nonprovisional application to be in condition for publication: (1) The basic filing fee; (2) an executed oath or declaration in compliance with 37 CFR 1.63; (3) a specification in compliance with 37 CFR 1.52; (4) an abstract in compliance with 37 CFR 1.72(b); (5) drawings in compliance with 37 CFR 1.84 (if applicable); (6) any application size fee required under 37 CFR 1.16(s); (7) any English translation required by 37 CFR 1.52(d); and (8) a sequence listing in compliance with 37 CFR 1.821-1.825 (if applicable). The USPTO also requires any petition under 37 CFR 1.47 to be granted, any compact disc requirements to be satisfied, and an English translation of the provisional application to be filed in the provisional application if the provisional application was filed in a non-English language and a translation has not yet been filed. If the requirements for publication are not met, applicant will need to satisfy the publication requirements within a two-month extendable time period as discussed in section II of this notice.

As noted above, applicants should request participation in the Extended Missing Parts Pilot Program by using Form PTO/SB/421. For utility patent applications, applicant may file the application and the certification and request electronically using the USPTO electronic filing system, EFS-Web, and selecting the document description of "Certification and Request for Missing Parts Pilot" for the certification and request on the EFS-Web screen. Form PTO/SB/421 will be available on the USPTO Web site at <http://www.uspto.gov/forms/index.jsp>. Information regarding EFS-Web is available on the USPTO Web site at <http://www.uspto.gov/ebc/index.jsp>. The utility application including the certification and request to participate in the pilot program may also be filed by mail or hand-carried to the USPTO. For plant patent applications, applicant must file the application including the certification and request to participate in the pilot program by mail or hand-carried to the USPTO since plant patent applications cannot be filed electronically using EFS-Web. See *Legal Framework for Electronic Filing System Web (EFS-Web)*, 74 FR 55200 (Oct. 27, 2009), 1348 *Off. Gaz. Pat. Office* 394 (Nov. 24, 2009).

It is strongly recommended that any new applications submitted by mail be filed using the "Express Mail Post Office to Addressee service" of the United States Postal Service (USPS) in accordance with 37 CFR 1.10 in order for the application to be considered filed with the USPTO on the date of deposit with the USPS. If the "Express Mail" service of the USPS (in accordance with 37 CFR 1.10) is not utilized, then the new application can only be accorded the date of actual receipt in the USPTO (and there is no remedy for an application that is lost in the mail). New applications cannot be submitted by facsimile transmission and, if submitted by facsimile transmission, are not accorded a filing or receipt date and may be returned to applicant. See 37 CFR 1.6(d) and 1.8(a)(2)(i)(A).

**II. Processing of Requests:** If applicant satisfies the requirements (discussed above) on filing of the nonprovisional application and the application is in condition for publication, the USPTO will send applicant a Notice to File Missing Parts of Nonprovisional Application that sets a twelve-month (non-extendable) time period to submit the search fee, the examination fee, any excess claims fees (under 37 CFR 1.16(h)-(j)), and the surcharge under 37 CFR 1.16(f) (for the late submission of the search fee and examination fee). The

twelve-month time period will run from the mailing date, or notification date for e-Office Action participants, of the Notice to File Missing Parts. For information on the e-Office Action program, see *Electronic Office Action*, 1343 *Off. Gaz. Pat. Office* 45 (June 2, 2009), and [http://www.uspto.gov/patents/process/status/e-Office\\_Action.jsp](http://www.uspto.gov/patents/process/status/e-Office_Action.jsp). After an applicant files a timely reply to the Notice to File Missing Parts within the twelve-month time period and the nonprovisional application is completed, the nonprovisional application will be placed in the examination queue based on the actual filing date of the nonprovisional application.

**A. Application Not in Condition for Publication:** If the application papers need to be corrected in order 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), or if the basic filing fee or an executed oath or declaration is not submitted on filing, and applicant has submitted a certification and request to participate in the pilot program, the USPTO will send a Notice to File Missing Parts of Nonprovisional Application that: (1) Sets a two-month (extendable) time period for applicant to correct the application papers and/or submit the basic filing fee or executed oath or declaration and surcharge (if appropriate), and (2) sets a twelve-month (non-extendable) time period for applicant to submit the search fee, the examination fee, any excess claims fees, and the surcharge for the late filing of the search fee and examination fee (if appropriate). If the basic filing fee and/or an executed oath or declaration is not submitted on filing, applicant will be required to pay the surcharge under 37 CFR 1.16(f) for the late filing of the basic filing fee and/or executed oath or declaration within the two-month (extendable) time period. Applicants are advised that only a single surcharge under 37 CFR 1.16(f) is required in a nonprovisional application for filing any of the basic filing fee, the executed oath or declaration, the search fee, or the examination fee after the filing date of the application.

Example: On December 15, 2010, applicant files a nonprovisional utility application under 35 U.S.C. 111(a) that claims the benefit of a prior-filed provisional application filed December 20, 2009. The benefit claim to the provisional application is included in

the first sentence of the specification of the nonprovisional application. The nonprovisional application is filed with a "Certification and Request for Extended Missing Parts Pilot Program" (Form PTO/SB/421). The nonprovisional application includes a specification in compliance with 37 CFR 1.52, drawings in compliance with 37 CFR 1.84, an abstract in compliance with 37 CFR 1.72(b), and an executed declaration in compliance with 37 CFR 1.63. No fees are submitted with the nonprovisional application. Thereafter, on January 3, 2011, the USPTO mails a Notice to File Missing Parts of Nonprovisional Application that sets: (1) A two-month (extendable) time period for applicant to submit the basic filing fee and the surcharge under 37 CFR 1.16(f), and (2) sets a twelve-month (non-extendable) time period for applicant to submit the search fee and the examination fee. In order to avoid abandonment of the application, applicant would need to either: (1) Pay the basic filing fee and the surcharge under 37 CFR 1.16(f) by March 3, 2011, if payment of the basic filing fee and the surcharge is being submitted without a petition for extension of time under 37 CFR 1.136(a) and extension fee; or (2) pay the basic filing fee and the surcharge by no later than August 3, 2011, if submitted with an appropriate petition for extension of time under 37 CFR 1.136(a) and extension fee. In addition, applicant would need to pay the search fee and the examination fee by January 3, 2012, to avoid abandonment of the application. Applicant would not need to pay another surcharge with the search and examination fees since the surcharge was paid with the basic filing fee.

**B. Improper Requests:** Requests to participate in the Extended Missing Parts Pilot Program will not be accepted in the following situations: (1) Where the certification and request is submitted in an application that is not eligible for the pilot program; (2) where the application is not entitled to a filing date; (3) where the certification and request is submitted after the filing date of the nonprovisional application; (4) where the nonprovisional application does not directly claim the benefit under 35 U.S.C. 119(e) and 37 CFR 1.78 of a provisional application filed within the previous twelve months; and (5) where a nonpublication request is filed with the nonprovisional application.

(1) *Application is Not Eligible:* Design applications, provisional applications, national stage applications under 35 U.S.C. 371, international (PCT) applications, reissue applications, and

reexamination proceedings are excluded from the Extended Missing Parts Pilot Program. In these situations, the USPTO will send a Notice to File Missing Parts that sets a two-month (extendable) time period to submit any missing items including fees.

(2) *No Filing Date:* If a nonprovisional application is submitted that does not meet the requirements under 35 U.S.C. 111(a) to be accorded a filing date, the USPTO will send a Notice of Incomplete Application that sets a two-month time limit for applicant to submit the items required for a filing date. In the situation where a Notice of Incomplete Application is sent, the certification and request to participate in the Extended Missing Parts Pilot Program may be accepted once the application is entitled to a filing date if the requirements of the Extended Missing Parts Pilot Program are met. It should be noted, however, that if the nonprovisional application is accorded a filing date that is more than twelve months after the provisional application's filing date, the certification and request to participate will not be accepted since the benefit claim to the provisional application would not be proper.

(3) *Untimely Request:* If applicant submits the certification and request for the Extended Missing Parts Pilot Program after the filing date of the nonprovisional application, the USPTO will not accept the request and the application will not be eligible for the program. Therefore, the USPTO will send a Notice to File Missing Parts that sets a two-month (extendable) time period to submit any missing items including fees.

(4) *No Proper Benefit Claim:* If applicant submits a certification and request to participate in the Extended Missing Parts Pilot Program, but does not include a claim for the benefit under 35 U.S.C. 119(e) and 37 CFR 1.78 of a prior provisional application, the USPTO will send applicant a Notice to File Missing Parts that only sets a two-month time period. In this situation, applicant may submit a proper benefit claim of a prior provisional application within four months from the filing date of the nonprovisional application if applicant still wants a twelve-month time period to submit the search fee, examination fee, any excess claims fees, and the surcharge (if appropriate). Applicant would need to timely file any other items required in the Notice to File Missing Parts. If applicant submits a proper benefit claim within four months, the USPTO would send a notice (e.g., a Notice of Incomplete Reply) that states applicant has a twelve-month time period from the

mailing date (or notification date) of the initial Notice to File Missing Parts to submit the search fee, examination fee, any excess claims fees, and the surcharge (if the surcharge is not required for the late filing of the basic filing fee or an executed oath or declaration). If it is more than four months from the filing date of the nonprovisional application, applicant would most likely need a petition under 37 CFR 1.78 to accept an unintentionally delayed claim for the benefit of a prior provisional application. Therefore, applicants will not be permitted to add or correct the benefit claim under 35 U.S.C. 119(e) and 37 CFR 1.78 for the purpose of being eligible for the pilot program if it is more than four months from the filing date of the nonprovisional application.

(5) *A Nonpublication Request is Filed:* If applicant submits a nonpublication request and a certification and request to participate in the Extended Missing Parts Pilot Program on filing of the application and thus the USPTO sends a Notice to File Missing Parts that only sets a two-month time period, applicant may submit a timely and properly signed rescission of the nonpublication request (e.g., PTO/SB/36) if applicant still wants a twelve-month time period to submit the search fee, examination fee, any excess claims fees, and the surcharge (if appropriate). Applicant would need to timely file any other items required in the Notice to File Missing Parts. If applicant submits such a proper rescission of the nonpublication request, the USPTO would send a notice (e.g., a Notice of Incomplete Reply) that states applicant has a twelve-month time period from the mailing date (or notification date) of the initial Notice to File Missing Parts to submit the search fee, examination fee, any excess claims fees, and the surcharge (if the surcharge is not required for the late filing of the basic filing fee or an executed oath or declaration).

C. *Authorization to Charge Fees:* If applicant wishes to participate in the Extended Missing Parts Pilot Program, applicant should not provide a general authorization to charge fees or a specific authorization to charge the search, examination, and/or excess claims fees to a deposit account. However, in the rare situation where applicant files a proper certification and request to participate in the Extended Missing Parts Pilot Program with the application on filing, and all other requirements set forth in this notice are satisfied, but applicant submits an authorization to charge fees to a deposit account that covers fees set forth in 37 CFR 1.16, the

USPTO will: (1) Recognize the certification and request to participate in the Extended Missing Parts Pilot Program; (2) provide applicant a twelve-month (non-extendable) time period to pay the search and examination fees, any required excess claims fees, and the surcharge (if appropriate) in response to a Notice to File Missing Parts of Nonprovisional Application under the Extended Missing Parts Pilot Program; and (3) charge the basic filing fee and any required application size fee if not otherwise submitted. In this situation, the Office will accept the authorization to charge fees to a deposit account for any fees that are due, excluding the search and examination fees and excess claims fees. Thus, applicant will be eligible for the Extended Missing Parts Pilot Program and must reply to the Notice to File Missing Parts of Nonprovisional Application under the Extended Missing Parts Pilot Program within the twelve-month time period by paying the search and examination fees, any required excess claims fees, and any required surcharge, to avoid the abandonment of the application.

III. *Important Reminders:* 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.

Furthermore, the nonprovisional application as originally filed must have a complete disclosure that complies with 35 U.S.C. 112, first paragraph, which is sufficient to support the claims submitted on filing and any claims submitted later during prosecution. New matter cannot be added to an application after the filing date of the application. See 35 U.S.C. 132(a). In order to be accorded a filing date, a nonprovisional application requires a specification as prescribed by 35 U.S.C. 112, which requires the specification to conclude with at least one claim, and drawings as prescribed by 35 U.S.C. 113, which requires drawings if necessary for an understanding of the invention. See 35 U.S.C. 111(a). While only one claim is required in a nonprovisional application for filing date purposes and applicant may file an amendment adding additional claims later during prosecution, applicant should consider the benefits of submitting a complete set of claims on filing of the nonprovisional application. This would reduce the likelihood of adding claims later during prosecution

that contain new matter. Also, if a patent is granted and the patentee is successful in litigation against an infringer, provisional rights to a reasonable royalty under 35 U.S.C. 154(d) may be available only if the claims that are published in the patent application publication are substantially identical to the patented claims that are infringed, assuming timely actual notice is provided. Thus, the importance of the claims that are included in the patent application publication should not be overlooked.

Applicants are also advised that the extended missing parts period does not affect the twelve-month priority period provided by the Paris Convention for the Protection of Industrial Property (Paris Convention). Thus, any foreign filings must still be made within twelve months of the filing date of the provisional application if applicant wishes to rely on the provisional application in the foreign-filed application or if protection is desired in a country requiring filing within twelve months of the earliest application for which rights are left outstanding in order to be entitled to priority.

The current patent term adjustment (PTA) provisions apply to all original utility or plant nonprovisional applications filed on or after May 29, 2000, which will include applications under the pilot program. Therefore, any 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). If an applicant replies to a Notice to File Missing Parts more than three months after mailing (or notification) of the notice, the additional time will be treated as an offset to any positive PTA that is accrued by applicant.

In no event will a reduction under 37 CFR 1.704(b) reduce the twenty-year patent term. The "twenty-year patent term" refers to the term of a patent (other than a design patent) that begins on the date the patent issues and ends on the date that is twenty years from the date on which the application for patent was filed in the United States or, if the application contains a specific reference to an earlier filed application or applications under 35 U.S.C. 120, 121, or 365(c), twenty years from the filing date of the earliest of such application(s). See 35 U.S.C. 154(a)(2). Domestic benefit under 35 U.S.C. 119(e) to one or more provisional applications is not considered in the calculation of the twenty-year term. For more information on patent term, see section 2701 of the Manual of Patent Examining

Procedure (MPEP) (8th ed. 2001) (Rev. 2, May 2004).

Applicants are also reminded that fees are subject to change and the fees that are due in an application are the fees in effect at the time of fee payment. Therefore, if the search fee, examination fee, excess claims fees, and/or the surcharge (or any other fees) have increased after the mailing (or notification) of a Notice to File Missing Parts that sets a time period to pay such fees, applicant will be required to pay the increased fee amounts. Applicants should consult the current fee schedule on the USPTO Web site before paying any fees that are due.

Form PTO/SB/421 will include an identification of the requirements of the Extended Missing Parts Pilot Program as well as various acknowledgments regarding the pilot program. Therefore, applicants requesting participation in the Extended Missing Parts Pilot Program should be aware of the requirements and the potential drawbacks of the pilot program.

IV. *Paperwork Reduction Act*: An applicant who wishes to participate in the pilot program must submit a certification and request to participate in the Extended Missing Parts Pilot Program, preferably by using Form PTO/SB/421. The Office of Management and Budget (OMB) has determined that, under 5 CFR 1320.3(h), Form PTO/SB/421 does not collect "information" within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, this notice does not involve information collection requirements which are subject to review by OMB.

The USPTO previously published the notice *Missing Parts Practice*, 75 FR 53631 (Sept. 1, 2010), requesting comments on the USPTO's proposal to collect information using Form PTO/SB/421. In light of OMB's determination that Form PTO/SB/421 does not collect information within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the USPTO is withdrawing the request for comments issued in the September 1, 2010 notice.

V. *Additional Information*: While the USPTO also requested comments on an optional service of having an international style search report prepared during the twelve-month extended missing parts period, the USPTO is not implementing such a service at this time.

Dated: November 19, 2010.

**David J. Kappos**,

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

[FR Doc. 2010-30822 Filed 12-7-10; 8:45 am]

**BILLING CODE 3510-16-P**

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## CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 11-C0002]

### Winter Bee, Inc., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e).<sup>1</sup> Published below is a provisionally-accepted Settlement Agreement with Winter Bee, Inc., containing a civil penalty of \$200,000.00, to be suspended except for \$40,000.00, to be paid over a period of 20 months as specified in the Order.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by December 23, 2010.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 11-C0002, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

**FOR FURTHER INFORMATION CONTACT:** Seth B. Popkin, Lead Trial Attorney, Division of Enforcement and Information, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7612.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

<sup>1</sup> The Commission voted 4-1 to publish this notice of the provisional Settlement Agreement and Order. Commissioner Nord issued a statement, and the statement can be found at <http://www.cpsc.gov/pr/statements.html>.