

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522-8220 (voice) or (808) 522-8226 (fax), at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

**Dated:** December 22, 2010.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 2010-32595 Filed 12-27-10; 8:45 am]

**BILLING CODE 3510-22-P**

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

[Docket No. PTO-T-2010-0090]

#### Coding of Design Marks in Registrations

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The United States Patent and Trademark Office ("USPTO") proposes to discontinue its secondary design coding, the practice of coding newly registered trademarks in its searchable electronic database with design mark codes based on the old paper search designations.

**DATES:** Comments must be received by January 27, 2011 to ensure consideration.

*Addresses for Comments:* The USPTO prefers that comments be submitted via electronic mail message to [TMFRNotices@uspto.gov](mailto:TMFRNotices@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; 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 USPTO's Web site at <http://www.uspto.gov> and will also be available at the Trademark Legal Policy Office, Madison East, Fourth 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:

##### Background

Pursuant to 35 U.S.C. 41(i)(1)-(2), the USPTO maintains a publicly available searchable collection of all United States trademark registrations. Initially, the collection was provided in paper form only. Currently, the USPTO provides the collection in electronic form.

When the trademark collection was maintained in paper form, marks were searched in tall cabinets located at the USPTO's Public Search Facility. In addition to the public, trademark examiners searched using the paper collection to determine whether registration should be refused pursuant to 15 U.S.C. 1052(d). Design marks were separated into design categories, groups, types, or divisions, subdivided into specific representations according to the U.S. class of goods or services covered in the registrations, and then arranged in ascending order by registration number. Marks with multiple design elements generally had to be searched separately, which was both challenging and time-consuming.

In an effort to improve the efficiency of searching for the public and USPTO examiners, the USPTO began developing a searchable electronic database of marks in 1982. By 1988, the USPTO's trademark examining attorneys used the automated system exclusively to conduct their searches. The USPTO also began to provide public access to the trademark database of active registered and pending marks through the Public Search Facility and later on the USPTO Web site.

When developing the new automated search system, the USPTO also developed a new numerical design code system, modeled after the International Classification of the Figurative Elements

of Marks ("USPTO Design Classification"), which was intended for an electronic environment and would enable searching multiple design elements in one search. In this system, each design element is generally assigned a six-digit numerical code: the first two digits indicate the category type (e.g., category 01 is celestial bodies, natural phenomena, and geographical maps), the next two digits indicate the division (e.g., 07 is globes), and the last two digits indicate the section (e.g., section 05 is globes held by a human). This numerical design code system is more robust than the paper search design code system, which relies exclusively on a word or term to identify a design element and cannot achieve the level of detail of the numerical system.

In conjunction with the new design code system, the USPTO also provided (and continues to provide) a Design Search Code Manual ("Manual") that includes an index, provides guidance on and examples, cross-references related material, and gives tips on searching using this system. The Manual is available to the public on the USPTO Web site.

In 2002, the USPTO submitted a report to Congress detailing a plan for the removal of a portion of its paper search collection. However, in response to public concern about relying exclusively on the electronic system, the USPTO decided to temporarily retain the paper collection of registrations with design coding, while improving the accuracy of its electronic database, and modified its plan accordingly.

In 2007, the USPTO submitted a new report to Congress with updated information about the improved accuracy of its electronic database and USPTO Design Classification coding, microfilmed all paper trademark registrations that include design elements, and removed the entire paper search collection from its search facility. At the same time, the USPTO replicated in the automated search system the paper design code system, exhibiting these word-based codes in a new data field for the electronic search system called the Trademark Search Facility Classification Code Index ("TC Index"). The TC Index allowed those who wished to search using the old paper designations to continue to do so in the electronic database.

#### Proposed Changes

After more than three years of coding under both the TC Index and USPTO Design Classification systems, the USPTO proposes to discontinue applying the TC Index code system to

registrations because it is no longer cost-effective and is never used by USPTO examining attorneys and rarely used by the public.

Currently, the assignment of TC Index codes to active U.S. trademark registrations in the searchable electronic database costs approximately \$531,000 per fiscal year for staffing and systems maintenance and support costs. Terminating the dual design-coding system will result in cost savings and will free the staff to perform more valuable services for the public.

Searches based on the TC Index coding appear to be quite minimal. For example, Trademark Electronic Search System ("TESS") searches conducted from January 1, 2010 through July 31, 2010, show that of the on-average 2,531,680 searches conducted per month, on average only 229 employed the TC Index coding to search. By contrast, 2,805 searches, on average, relied on the USPTO Design Classification. Thus, the vast majority of design searches are currently performed using the USPTO Design Classification system. USPTO examining attorneys also rely exclusively on the USPTO Design Classification system to search.

Compared with the USPTO Design Classification coding system, the TC Index coding system provides little or no benefit to users that would justify the cost to maintain it. The very general categories of designs result in cumbersome and time-consuming searches, generating sometimes enormous results lists for users to review. For example, the TC Index coding system groups stars under the design code SHAPES-ASTRO, which encompasses all astronomical shapes consisting of celestial bodies (such as the moon, sun, stars, planets, *etc.*), globes, and geographical maps. Searching this TC design code generates approximately 16,001 registrations and there is no mechanism for restricting the search to five-pointed stars, or six-pointed stars, or groups of stars. Users must expend considerable time reviewing all registered marks containing celestial bodies, globes, and geographical marks to locate the specific types of star marks that are of interest to them.

Searches using the TC Index codes can also provide imperfect results. For example, the TC Index does not have a specific code for Braille, and images are coded as SHAPES-CIRCLES, which retrieves over 45,000 search results. Searching large numbers of circles is an inefficient way to locate Braille marks. Searches generally are also less accurate than those performed using the USPTO Design Classification coding system.

By contrast, advances in coding under the USPTO Design Classification and its greater specificity provide the public with more precise and accurate search results than are currently available through the use of the TC Index codes. Additionally, the USPTO Design Classification is applied to pending applications for marks with designs as well as to registered marks with designs, thereby making it more useful in assessing potential likelihood of confusion. Examining attorneys rely solely on the USPTO Design Classification for examining and approving applications for marks with design codes for Federal registration.

The USPTO invests heavily in its electronic search systems, and commits considerable resources to ensuring the quality of design coding under the USPTO Design Classification system. When an application with design elements is filed, specially trained Federal employees in the Pre-Examination section of the USPTO review the mark drawing and assign USPTO Design Classification codes. In 2008, the USPTO amended the Rules of Practice in trademark cases to require a description of any mark not in standard character, in order to obtain the applicant's characterization of design elements to assist the USPTO in making accurate and comprehensive design-coding determinations. For example, employees use the applicant's mark description to clarify ambiguous design elements, thereby promoting correct design coding. The USPTO continues to provide comprehensive training to Pre-Examination employees on coding marks with design elements to ensure accuracy in coding. In addition, the USPTO performs quality review of the work of the employees, which improves confidence in the consistency and accuracy of the design coding.

The design coding in an application is reviewed again when a mark with design elements is assigned to a well-trained examining attorney to determine whether Federal law permits registration. The examining attorney reviews the mark, the design codes, and the mark description and may determine whether codes should be added or deleted. In 2008, the USPTO also provided rigorous training to its Legal Instruments Examiners, who assist in reviewing and updating application and registration data, on coding under the USPTO Design Classification. This review of design coding by different groups at the USPTO has greatly increased accuracy and decreased subjectivity in coding.

The USPTO Design Classification codes are also subject to external review

by the public, which further ensures correct design coding. Each applicant for a mark that includes a design element receives a notice from the USPTO identifying the USPTO Design Classification codes assigned to their mark and providing detailed instructions on how to suggest additions or revisions to the assigned codes. Since 2005, the USPTO has sent approximately 367,000 such notices. These notices provide applicants with an opportunity to enhance the quality of the design coding of marks with design elements.

After a mark registers, filing receipts for post-registration filings submitted via the Trademark Electronic Application System notify registrants of the ability to request additions or corrections to the USPTO Design Classification codes assigned to their registered marks. Furthermore, upon acceptance of a registrant's Declaration of Use and/or Excusable Nonuse of Mark in Commerce under 15 U.S.C. 1058, the registration file is referred to USPTO employees for yet another review of the design codes assigned to the mark. Upon completion of the review, the USPTO notifies the registrant of the USPTO Design Classification codes assigned to their registered mark and provides information on revising design codes. The USPTO Web site also provides information on submitting corrections or additions to design codes in trademark applications and registrations. Even members of the public may submit a design coding suggestion. These measures all help to ensure a high level of coding accuracy.

The USPTO also updated the Manual in 2006 to allow for greater precision in identifying and coding designs. Many of the larger design-code sections were modified to create smaller sections. For example, three new design code entries for stars were added, which allow users to narrow searches to specific types of stars. These changes result in faster and more efficient electronic searches with little irrelevant data returned.

In view of the widespread use of the USPTO Design Classification system, its clear advantages and the limited use of the TC Index system, the impact of discontinuing coding based on the TC index appears minimal. The public and the USPTO will realize efficiencies. The USPTO will be able to devote more of its limited resources to the maintenance and improvement of the USPTO Design Classification system, which is more widely used by the public. All existing registrations coded with paper search designations will remain available in TESS and on microfilm. Design-coding

using the USPTO Design Classification system has continually improved through internal and external review of the coding and through internal training and quality-review procedures. The USPTO Design Classification system provides more accurate results, is available to all members of the public through the Internet, and is exclusively used by the examining attorneys at the USPTO.

Accordingly, the USPTO hereby gives notice of its intent to discontinue coding design marks with paper search designations. Any interested member of the public is invited to provide comments on this plan within thirty (30) days. The USPTO is providing this opportunity for public comment because the USPTO desires the benefit of public comment on the proposal; however, notice and an opportunity for public comment are not required under 5 U.S.C. 553(b) or any other law. See *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rule making for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.” (quoting 5 U.S.C. 553(b)(A))). Persons submitting written comments should note that the USPTO may not provide a “comment and response” analysis of such comments as notice and an opportunity for public comment are not required.

Dated: December 21, 2010.

**David J. Kappos,**

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

[FR Doc. 2010–32564 Filed 12–27–10; 8:45 am]

**BILLING CODE 3510–16–P**

**COMMODITY FUTURES TRADING COMMISSION**

**Sunshine Act Meetings**

The following notice of scheduled meetings is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

**AGENCY HOLDING THE MEETINGS:** Commodity Futures Trading Commission.

**TIMES AND DATES:** The Commission has scheduled two meetings for the following dates:

January 13, 2011 at 9:30 a.m.  
January 20, 2011 at 9:30 a.m.

**PLACE:** Three Lafayette Center, 1155 21st St., NW., Washington, DC. Lobby Level Hearing Room (Room 1000).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission has scheduled these meetings to consider the issuance of various proposed rules. Agendas for each of the scheduled meetings will be made available to the public and posted on the Commission’s Web site at <http://www.cftc.gov> at least seven (7) days prior to the meeting. In the event that the times or dates of the meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission’s Web site.

**CONTACT PERSON FOR MORE INFORMATION:** David A. Stawick, Secretary of the Commission, 202–418–5071.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. 2010–32749 Filed 12–23–10; 4:15 pm]

**BILLING CODE 6351–01–P**

**COMMODITY FUTURES TRADING COMMISSION**

**Sunshine Act Meetings**

**TIME AND DATE:** 11 a.m., Friday, January 28, 2011.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance and Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202–418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2010–32783 Filed 12–23–10; 4:15 pm]

**BILLING CODE 6351–01–P**

**COMMODITY FUTURES TRADING COMMISSION**

**Sunshine Act Meetings**

**TIME AND DATE:** 11 a.m., Friday, January 7, 2011.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance and Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202–418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2010–32780 Filed 12–23–10; 4:15 pm]

**BILLING CODE 6351–01–P**

**COMMODITY FUTURES TRADING COMMISSION**

**Sunshine Act Meetings**

**TIME AND DATE:** 11 a.m., Friday, January 14, 2011.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance and Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202–418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2010–32781 Filed 12–23–10; 4:15 pm]

**BILLING CODE 6351–01–P**

**COMMODITY FUTURES TRADING COMMISSION**

**Sunshine Act Meetings**

**TIME AND DATE:** 11 a.m., Friday January 21, 2011.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance and Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202–418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2010–32782 Filed 12–23–10; 4:15 pm]

**BILLING CODE 6351–01–P**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary of Defense**

**Notice of Advisory Committee Meeting Date Change**

**AGENCY:** Missile Defense Agency (MDA), DoD.

**ACTION:** Notice.

**SUMMARY:** On Tuesday, December 14, 2010, the Department of Defense announced by publication in the **Federal Register** (75 FR 77848) closed meetings of the Missile Defense