

Maryland 20899-4800, telephone number (301) 975-4269.

**SUPPLEMENTARY INFORMATION:** The MEP Advisory Board is composed of 10 members, appointed by the Director of NIST. MEP is a unique program consisting of centers across the United States and Puerto Rico with partnerships at the state, federal, and local levels. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. This meeting will focus on (1) Recent studies on international benchmarking of manufacturing support programs, (2) an update on MEP's Next Generation Strategy, and (3) discussion of innovation strategies for manufacturers including recent MEP Center and client experiences. The agenda may change to accommodate other Board business.

**Admission Instructions:** Anyone wishing to attend this meeting should submit their name, e-mail address, and phone number to Karen Lellock ([Karen.lellock@nist.gov](mailto:Karen.lellock@nist.gov) or 301-975-4269) no later than September 19, 2011.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the MEP Advisory Board's business are invited to request a place on the agenda. Approximately 15 minutes will be reserved for public comments at the beginning of the meeting. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received but is likely to be no more than three to five minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the MEP Advisory Board, National Institute of Standards and Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899-4800, or via fax at (301) 963-6556, or electronically by e-mail to [karen.lellock@nist.gov](mailto:karen.lellock@nist.gov).

Dated: August 22, 2011.

**Phillip A. Singerman,**

*Associate Director for Innovation and Industry Services.*

[FR Doc. 2011-21988 Filed 8-26-11; 8:45 am]

**BILLING CODE 3510-13-P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

[Docket No. PTO-P-2011-0032]

#### Establishing a One-Year Retention Period for Patent-Related Papers That Have Been Scanned Into the Image File Wrapper System or the Supplemental Complex Repository for Examiners

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

**ACTION:** Request for Comments.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is considering establishing a retention period of one year for patent-related papers that have been scanned into the Image File Wrapper system (IFW) or the Supplemental Complex Repository for Examiners (SCORE). Specifically, the USPTO is considering establishing a one-year retention period that begins on September 1, 2011, for papers scanned into IFW or SCORE prior to September 1, 2011; or a paper's submission date, for papers scanned into IFW or SCORE on or after September 1, 2011. After the expiration of the one-year retention period (after September 1, 2012, or later), the USPTO would dispose of the paper unless, within sufficient time prior to disposal of the paper, the relevant patent applicant, patent owner, or reexamination party files a *bona fide* request to correct the electronic record of the paper in IFW or SCORE, and the request remains outstanding at the time disposal of the paper would have otherwise occurred. Establishing a one-year retention period for papers scanned into IFW or SCORE would replace the USPTO's past practice of indefinitely retaining the papers, which has been rendered unnecessary and cost-ineffective by improvements in scanning and indexing.

**DATES:** *Comment Deadline Date:* To be ensured of consideration, written comments must be received on or before October 28, 2011. No public hearing will be held.

**ADDRESSES:** Comments concerning this notice may be sent by electronic mail message over the Internet addressed to [IFWPaperRetention@uspto.gov](mailto:IFWPaperRetention@uspto.gov), or submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. Although comments may be submitted by mail, the USPTO prefers to receive comments via the Internet.

The 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, and will be available via the USPTO Internet Web site (address: <http://www.uspto.gov>). Because comments will be 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:** Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at (571) 272-7728, 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 Raul Tamayo.

**SUPPLEMENTARY INFORMATION:** IFW is the USPTO's system for electronically storing and maintaining the files of patent applications and reexamination proceedings. The image files in IFW for patent applications and reexamination proceedings are the official records of those patent applications and reexamination proceedings. See *Changes to Implement Electronic Maintenance of Official Patent Application Records*, 68 FR 38611 (June 30, 2003), 1272 *Off. Gaz. Pat. Office* 197 (July 29, 2003). The USPTO stores in IFW documents it receives over the Electronic Filing System—Web (EFS-Web). In particular, the USPTO converts Portable Document Format (PDF) files submitted by users into Tagged Image File Format (TIFF) image files and then stores the TIFF image files in IFW as part of the official record for the relevant patent application or reexamination proceeding. The USPTO also stores in IFW as part of the official record of a patent application or reexamination proceeding the image files that it creates when it scans documents filed in paper, *i.e.*, filed by mail, at the USPTO's Customer Service Window, or, when permitted, facsimile. After being scanned into IFW, the papers are no longer part of the official record.

Since July 1, 2003, the USPTO has been scanning into IFW newly received patent applications filed in paper. See *Notification of United States Patent and Trademark Office Patent Application Records being Stored and Processed in Electronic Form*, 1271 *Off. Gaz. Pat. Office* 100 (June 17, 2003). In particular, the USPTO since July 1, 2003, has been scanning into IFW newly received, paper-filed (1) Nonprovisional applications under 35 U.S.C. 111(a), (2) provisional applications under 35 U.S.C. 111(b), (3) plant applications under 35 U.S.C. 161, (4) design

applications under 35 U.S.C. 171, and (5) reissue applications under 35 U.S.C. 251. Newly received, paper-filed nonprovisional applications under 35 U.S.C. 371 have been scanned into IFW as of November 30, 2005, and newly received, paper-filed international applications under the Patent Cooperation Treaty have been scanned into IFW as of January 1, 2007. In addition, the USPTO since August 2004 has been scanning into IFW newly received, paper-filed requests for reexamination.

Once an application or request for reexamination has been scanned into IFW, follow-on documents that are filed in paper for the application or reexamination proceeding are scanned into IFW. Follow-on documents are documents filed after the initial submission of the application or request for reexamination which include, but are not limited to, the following: amendments, information disclosure statements (IDS), replies to Office actions and notices, evidence, petitions, and other documents filed after the filing of an application or request for reexamination. Additionally, the USPTO scans into IFW all USPTO communications for applications and requests for reexamination that have been scanned into IFW.

The USPTO has also scanned into IFW the paper file wrappers, *i.e.*, all of the papers, including the initial applications or requests for reexamination, follow-on documents, and USPTO communications, of many applications filed prior to July 1, 2003, and many requests for reexamination filed prior to August 2004. For example, between 2003 and 2005, the USPTO physically moved its principal office to Alexandria, Virginia. During that period, the USPTO scanned into IFW the paper file wrappers of many of the then-pending 600,000 patent applications. Further, the USPTO routinely scans into IFW the paper file wrappers of applications filed prior to July 1, 2003, that were not pending during the 2003–2005 transition. For example, such scanning occurs when a document, *e.g.*, a request for patent term extension under 35 U.S.C. 156, is filed that necessitates repeated viewing of the paper file wrapper by one or more USPTO employees.

Not all documents filed via EFS–Web or in paper are stored in IFW. For example, grayscale and color images are converted to black and white images when stored in IFW. Accordingly, documents such as photographs and color or grayscale drawings, which would be degraded if stored in IFW as black and white images, are not stored

in IFW. Prior to 2007, documents that would be degraded if stored in IFW as black and white images were placed into Artifact Folders, and Artifact Sheets were then scanned into IFW as placeholders. By 2007, the USPTO had fully deployed SCORE, a data repository system designed to augment IFW with the capture and retrieval of non-standard content, such as color and grayscale drawings, complex tables, and sequence listings. Thus, since 2007, the USPTO stores in SCORE as part of the official record documents that would be degraded if stored in IFW as black and white images. In addition, the USPTO since 2007 scans into SCORE as part of the official record documents that were previously in Artifact Folders when, for example, an examiner makes a request to do so. When a document is stored in SCORE, a black and white copy of the document is stored in IFW along with a SCORE placeholder sheet.

Sequence listings and computer program listings, as well as documents that should not be entered initially (and must be filed in paper), such as trade secret, proprietary and/or protective order materials, are other examples of documents not stored in IFW, at least initially. Prior to the deployment of SCORE, sequence listings and computer program listings were placed into Artifact Folders with Artifact Sheets then scanned into IFW as placeholders. Since the deployment of SCORE, the USPTO has been storing sequence and computer program listings in SCORE as part of the official record. Documents that should not be entered initially (and must be filed in paper) are placed into Artifact Folders, and Artifact Sheets are then scanned into IFW as placeholders. If it is later determined that they should be entered into the official record, they are taken out of the Artifact Folders and scanned into IFW.

The USPTO stores in boxes the papers that it scans into IFW or SCORE. Scanned papers are boxed and stored in the order that they are scanned. A sample storage box of scanned documents may contain: newly received applications; follow-on documents for previously submitted applications; and USPTO communications for applications. It may also contain paper file wrappers of applications filed prior to July 1, 2003, that for some reason, *e.g.*, documents were filed that necessitated repeated viewing of the papers by one or more USPTO employees, were scanned into IFW at the time the box was being filled. Thus, while the image files of IFW are organized by application number or reexamination control number, paper sources of the image files are not. An

application filed in paper in 2006 can be in one box, a follow-on document filed in paper in 2007 for the application can be in a second box, a 2008 USPTO communication for the application can be in a third box, etc.

To date, the USPTO has not disposed of any of the boxes of papers that it has scanned into IFW or SCORE, even though the scanned papers are no longer part of the official record. In total, the USPTO has accumulated approximately 235,700 boxes and stores them at a repository near Springfield, Virginia.

By not disposing of the boxes, the papers have remained available for comparison purposes in limited circumstances when issues arise concerning the electronic records of the papers in IFW. However, the number of issues that arise which actually require the USPTO to retrieve a box from storage has steadily declined in the years since the USPTO started scanning. The USPTO can identify two principal reasons for this declining trend: (1) Indexing techniques and scanning quality have improved over the years; and (2) the increased use of EFS–Web has led to a decrease in the amount of paper that is filed, thus leading to a decrease in the amount of paper that is scanned (the submission rate through EFS–Web has increased from 14% in 2006 to 90% in 2010).

In 2004, the USPTO scanned a total of 195,829,268 pages, and 17,363 issues arose which could have required the USPTO to retrieve a box from storage. In 2010, the total number of pages scanned by the USPTO fell to 24,895,341, and only 1,581 issues arose which could have required the USPTO to retrieve a box from storage. Furthermore, the USPTO was able to remedy most of the 1,581 issues without actually retrieving a box. The 1,581 issues that could have required the USPTO to retrieve a box from storage required the retrieval of only 225 boxes.

The 225 boxes which required retrieval from storage represent less than 0.10% of the USPTO's total of approximately 235,700 boxes. Furthermore, the content of the papers in the box most often (116 out of the 225 boxes) matched the content of the image files in IFW. Of the 225 boxes retrieved from storage by the USPTO in 2010, only 109 were used to scan one or more papers into IFW or SCORE or to create an Artifact Folder (impacting a total of 87 patent applications). For 45 of the 109 boxes, papers were scanned into SCORE or placed into Artifact Folders, usually because the papers were inadvertently not scanned into SCORE or placed into Artifact Folders in the first place. For 36 of the 109 boxes,

papers were scanned into IFW because IFW did not contain image files for one or more pages of the papers. For 21 of the 109 boxes, papers were re-scanned into IFW due to quality issues with the initial image files in IFW. Under the assumption that there was one scanned image problem for each of the 21 boxes, the image scanning quality rate is 99.999916% ((24,895,341-21)/24,895,341), which exceeds Six Sigma quality standards. Finally, 7 of the 109 boxes were retrieved to address indexing errors for very large submissions.

While the number of issues that arise which actually require the retrieval of a box from storage has steadily declined, the cost of storing the boxes is high and will only increase if the USPTO's past practice is left unchanged. At present, the annual cost of storing and maintaining the boxes is approximately \$701,000. Thus, in 2010, the cost of correcting the 87 total applications impacted by the 225 box retrievals exceeded \$8,000 per application. Additionally, the space currently used to store the boxes is projected to reach its capacity by mid-year 2012. At that time, more warehouse space will need to be acquired, further increasing the USPTO's storage costs. The USPTO's past practice of indefinitely retaining the boxes of papers that it scans into IFW or SCORE is therefore not cost-effective.

Establishing a definite period of retention for papers scanned into IFW or SCORE would address the cost-ineffectiveness of the USPTO's past practice and yield other advantages. For example, it would further encourage the use of EFS-Web. In addition, by providing paper filers with a definite period during which they may review and determine the accuracy of the electronic record and request any needed corrections, both the USPTO and the public benefit from greater assurance that the official record in IFW is correct.

For the foregoing reasons, the USPTO is considering establishing a one-year retention period for papers that have been scanned into IFW or SCORE. Specifically, the USPTO is considering establishing a one-year retention period that begins on: (1) September 1, 2011, for papers scanned into IFW or SCORE prior to September 1, 2011; or (2) the paper's submission date, for papers scanned into IFW or SCORE on or after September 1, 2011. A one-year retention period would be consistent with the USPTO's currently pending request to the National Archives and Records Administration (NARA) to transition from general records disposition

authority GRS 20, item 2a(4) to the new USPTO-specific records disposition authority N1-241-10-1, item 4.4. Papers that have not been scanned into IFW or SCORE, such as certain papers placed into Artifact Folders, would not be subject to the one-year retention period and would remain retrievable consistent with past practice.

The USPTO considers the one-year retention period proposed in this notice to be preferable to shorter or longer retention periods. Retention periods of less than one year would not adequately meet the USPTO's objective of giving paper filers sufficient time to review their files and request corrections. Retention periods of more than one year would not sufficiently meet the USPTO's objectives of reducing storage costs and improving the quality of the official record in IFW. The USPTO considers that a retention period of one year would strike the best balance between these competing objectives. Moreover, a one-year retention period would be consistent with the USPTO's goal of reducing first action pendency to an average of 10 months by 2015.

If the USPTO adopts the one-year retention period proposed in this notice, the USPTO would dispose of the paper after the expiration of the one-year retention period (after September 1, 2012, or later), unless within sufficient time prior to disposal of the paper, the relevant patent applicant, patent owner, or reexamination party files a *bona fide* request to correct the electronic record of the paper in IFW or SCORE, and the request remains outstanding at the time the paper would have been scheduled for disposal. Filers of requests to correct the electronic record would be strongly advised to file their requests by EFS-Web using the document description "Electronic Record Correction" at least one month prior to the expiration of the one-year retention period to allow sufficient time to process the request. Requests that are not filed at least one month prior to the expiration of the one-year retention period may not be acted upon in time.

If the USPTO adopts the one-year retention period proposed in this notice, a patent applicant, patent owner, or reexamination party who, during the one-year retention period, is considering filing a request to correct the electronic record of a paper, and who believes that the evidence establishes that the need for correction was caused by the USPTO, would be advised to consider whether the initial submission date of the paper needs to be secured for the information being corrected. Such situations could involve (1) Adding information that would not otherwise be

supported by the original specification, (2) avoiding a reduction in patent term adjustment, or (3) avoiding an impact on the timeliness of an information disclosure statement under 37 CFR 1.97. If the initial submission date of the paper does not need to be secured for the information being corrected, the patent applicant, patent owner, or reexamination party should simply submit a corrective replacement document and accept the date of such submission for the corrective replacement document. If, however, the initial submission date of the paper needs to be secured for the information being corrected, a request for correction based on the initially submitted paper should be filed as a petition under 37 CFR 1.181. The request should specifically point out the error(s) in the electronic record of the paper in IFW or SCORE and be accompanied by a replacement copy of the paper, along with (1) Any evidence to establish (a) that the need for correction was caused by the USPTO, and (b) the proper submission date of the original paper, and (2) a statement that the replacement copy is a true copy of what was originally filed.

When making a decision on the request, the USPTO's presumption would be that the electronic record of the paper in IFW or SCORE is accurate and correction is not merited. The USPTO would check to see whether it has the paper at issue. If the USPTO has the paper, the USPTO's version of the paper would either support the request for correction, in which case the request would be granted, or the USPTO's version of the paper would not support the request, in which case the request would be dismissed.

On the other hand, if the USPTO does not have the paper, *e.g.*, the paper has been lost, the presumption that the electronic record of the paper in IFW or SCORE is correct could be rebutted where the evidence submitted with the request is sufficient to overcome the presumption. A postcard receipt which itemizes and properly identifies the items that have been filed would serve as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. However, while a postcard receipt may be the only evidence needed for the USPTO to accept, for example, the missing tenth page of a 10-page document that has been properly identified on the postcard as a 10-page document, the postcard receipt may be insufficient, on its own, for the USPTO to accept a replacement tenth page of a properly identified 10-page document, where all 10 pages were actually

received by the USPTO and, for example, a sentence is missing on one page or a chemical structure is thought to have been changed.

Any decision dismissing a request to correct the electronic record would provide a two-month period to file a request for reconsideration of the decision, in accordance with 37 CFR 1.181(f).

The USPTO would not dispose of a paper for which, within sufficient time prior to disposal of the paper, a *bona fide* request to correct the electronic record of the paper has been filed and remains outstanding at the time the paper would have been scheduled for disposal. A request would be a *bona fide* request when it specifically points out the error(s) in the paper and is accompanied by any necessary evidence. A general allegation that a paper requires correction filed without evidentiary support would not be a *bona fide* request. It would be inadequate to stay the disposal of the paper and would be dismissed. Once filed, a *bona fide* request to correct the electronic record would remain outstanding unless the USPTO has either (1) Issued a decision granting either the original request or a request for reconsideration of the original request, or (2) issued a final agency decision denying a request for reconsideration of the original request.

If the USPTO adopts the one-year retention period proposed in this notice, a patent applicant, patent owner, or reexamination party who is considering filing a request to correct the electronic record of a paper, but who cannot establish that the need for correction was caused by the USPTO, would be advised to not file the request. Other options for relief may be available when it cannot be established that the need for correction was caused by the USPTO. For example, an amendment under 37 CFR 1.57(a) may be filed to address the problem of an application filed with inadvertently omitted material when the application contains a claim under 37 CFR 1.55 for priority of a prior-filed foreign application, or a claim under 37 CFR 1.78 for the benefit of a prior-filed provisional, nonprovisional, or international application. See MPEP § 201.17. As another example, an amendment may be filed to correct an obvious error, along with any evidence, such as an expert declaration, necessary to establish that one of ordinary skill in the art would recognize both the existence of the error and the appropriate correction. See MPEP § 2163.07, II.

If the USPTO adopts the one-year retention period proposed in this notice,

a patent applicant, patent owner, or reexamination party may file a request to correct the electronic record of a paper after the one-year retention period, if the evidence is believed to establish that the need for correction was caused by the USPTO, and the initial submission date of the paper needs to be secured for the information being corrected. The USPTO likely would have disposed of any paper for which a request to correct the electronic record is filed after the one-year retention period. Therefore, the typical request for correction filed after the one-year retention period would have to overcome the presumption that the electronic record of the paper in IFW or SCORE is accurate and correction is not merited. For certain instances, e.g., when a paper was inadvertently not scanned into SCORE or placed into an Artifact Folder, there would be a black and white image of the paper in IFW that could be used to corroborate any submitted evidence.

The proposed procedure set forth in this notice for filing a request to correct the electronic record of a paper that has been scanned into IFW or SCORE would not be a replacement for the USPTO's established procedure for responding to a notice (e.g., a "Notice of Omitted Item(s) in a Nonprovisional Application") from the Office of Patent Application Processing (OPAP) indicating that the application papers have been accorded a filing date, but are lacking some page(s) of the specification or some of the figures of drawings described in the specification. Applicants would continue to follow the procedure set forth at *Change in Procedure for Handling Nonprovisional Applications Having Omitted Items*, 1315 *Off. Gaz. Pat. Office* 103 (February 20, 2007), when responding to such a notice from OPAP.

In addition, the proposed procedure set forth in this notice for filing a request to correct the electronic record of a paper that has been scanned into IFW or SCORE would be generally applicable only to situations in which a certain document, or one or more pages of a certain document, contains an error caused by the USPTO that requires correction. The proposed procedure set forth in this notice would not be a replacement for the USPTO's file reconstruction procedures (37 CFR 1.251 and MPEP § 508.04). Paper sources for the image files in IFW are boxed in the order that they are scanned, rather than by application number or reexamination control number, such that a request to correct requiring the retrieval of papers from

multiple boxes could not be reasonably effected.

Dated: August 17, 2011.

**David J. Kappos,**

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

[FR Doc. 2011-21964 Filed 8-26-11; 8:45 am]

**BILLING CODE 3510-16-P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 10 a.m., Friday, September 2, 2011.

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

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** *Surveillance and Enforcement Matters.* In the event that the times or dates of these or any future 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 at <http://www.cftc.gov>.

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

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2011-22148 Filed 8-25-11; 4:15 pm]

**BILLING CODE 6351-01-P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 10 a.m., Friday, September 9, 2011.

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

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** *Surveillance and Enforcement Matters.* In the event that the times or dates of these or any future 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 at <http://www.cftc.gov>.

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

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2011-22152 Filed 8-25-11; 4:15 pm]

**BILLING CODE 6351-01-P**