

**TABLE I-12— SELECTION OF RETIREMENT RATE CATEGORY**  
 [For plans with valuation dates after December 31, 2011, and before January 1, 2013]

If participant reaches URA in year—	Participant's Retirement Rate Category is—			
	Low <sup>1</sup> if monthly benefit at URA is less than—	Medium <sup>2</sup> if monthly benefit at URA is—		High <sup>3</sup> if monthly benefit at URA is greater than—
		From—	To—	
2013 .....	575	575	2,431	2,431
2014 .....	586	586	2,477	2,477
2015 .....	598	598	2,527	2,527
2016 .....	610	610	2,577	2,577
2017 .....	623	623	2,632	2,632
2018 .....	636	636	2,687	2,687
2019 .....	649	649	2,743	2,743
2020 .....	663	663	2,801	2,801
2021 .....	677	677	2,860	2,860
2022 or later .....	691	691	2,920	2,920

<sup>1</sup> Table II-A.<sup>2</sup> Table II-B.<sup>3</sup> Table II-C.

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Issued in Washington, DC, this 18th day of November 2011.

**Laricke Blanchard,**

*Deputy Director for Policy, Pension Benefit Guaranty Corporation.*

[FR Doc. 2011-30849 Filed 11-30-11; 8:45 am]

**BILLING CODE 7709-01-P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 1

[Docket No. PTO-P-2011-0014]

RIN 0651-AC56

#### Revision of Patent Term Adjustment Provisions Relating to Information Disclosure Statements

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

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (Office) is revising the patent term adjustment provisions of the rules of practice in patent cases. The patent term adjustment provisions of the American Inventors Protection Act of 1999 (AIPA) provide for a reduction of any patent term adjustment if the applicant failed to engage in reasonable efforts to conclude prosecution of the application. The Office is revising the rules of practice pertaining to the reduction of patent term adjustment for applicant delays to exclude information disclosure statements resulting from the citation of information in a counterpart application that are promptly filed with

the Office. The rule change allows the diligent applicant to avoid patent term adjustment reduction for an IDS submission that results from a communication from the Office. Presently, the rule only provides relief if the IDS was cited as a result of a communication from a foreign patent office. Under this final rule, there will be no reduction of patent term adjustment in the following situations: when applicant promptly submits a reference in an information disclosure statement after the mailing of a notice of allowance if the reference was cited by the Office in another application, or when applicant promptly submits a copy of an Office communication (e.g., an Office action) in an information disclosure statement after the mailing of a notice of allowance if the Office communication was issued by the Office in another application or by a foreign patent office in a counterpart foreign application. The above changes are intended to ensure compliance with AIPA in light of the evolving case law.

**DATES:** *Effective Date:* December 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Kery A. Fries, Senior Legal Advisor, Office of Patent Legal Administration, by telephone at (571) 272-7757, by mail addressed to: Box Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of Kery A. Fries.

**SUPPLEMENTARY INFORMATION:** The AIPA amended 35 U.S.C. 154(b) to provide patent term adjustment for certain delays during the patent examination process. *See* Public Law 106-113, 113 Stat. 1501, 1501A-552 through 1501A-591 (1999)). Specifically, under the

patent term adjustment provisions of 35 U.S.C. 154(b) as amended by the AIPA, an applicant is entitled to patent term adjustment for the following reasons: (1) If the Office fails to take certain actions during the examination and issue process within specified time frames (35 U.S.C. 154(b)(1)(A)); (2) if the Office fails to issue a patent within three years of the actual filing date of the application in the United States (35 U.S.C. 154(b)(1)(B)); and (3) for delays due to interference, secrecy order, or successful appellate review (35 U.S.C. 154(b)(1)(C)). The AIPA, however, sets forth a number of conditions and limitations on any patent term adjustment accrued under 35 U.S.C. 154(b)(1). Specifically, 35 U.S.C. 154(b)(2)(C) provides, in part, that “[t]he period of adjustment of the term of a patent under [35 U.S.C. 154(b)(1)] shall be reduced by a period equal to the period of time during which the applicant failed to engage in reasonable efforts to conclude prosecution of the application” and that “[t]he Director shall prescribe regulations establishing the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application.” 35 U.S.C. 154(b)(2)(C)(i) and (iii). The Office implemented the patent term adjustment provisions of 35 U.S.C. 154(b) as amended by the AIPA, including setting forth the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application, in a final rule published in September of 2000. *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent*

*Term*, 65 FR 56366 (Sept. 18, 2000) (patent term adjustment final rule).

Section 1.704(c) provides that the submission of an information disclosure statement either that is after a notice of allowance, an initial reply, or that requires a supplemental Office action, results in a reduction of any patent term adjustment under 37 CFR 1.703. *See* 37 CFR 1.704(c)(6), 1.704(c)(8), 1.704(c)(9), and (c)(10). Section 1.704(d) provides that an information disclosure statement will not result in a patent term adjustment reduction under 37 CFR 1.704(c)(6), 1.704(c)(8), 1.704(c)(9), or (c)(10) if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in a communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in 37 CFR 1.56(c) more than thirty days prior to the filing of the information disclosure statement. 37 CFR 1.704(d) permits applicants to submit information first cited in a communication from a foreign patent office in a counterpart application to the Office without a reduction in patent term adjustment if an information disclosure statement is promptly (within thirty-days of receipt of the communication) submitted to the Office.

Recent decisions by the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) underscore the importance of making information cited and Office actions issued in related copending foreign and domestic applications of record. *See Dayco Products, Inc. v. Total Containment, Inc.*, 329 F.3d 1358 (Fed. Cir. 2003) and *McKesson Info. Solutions, Inc. v. Bridge Medical, Inc.*, 487 F.3d 897 (Fed. Cir. 2007); *see also Larson Mfg. Co. v. Aluminart Products Ltd.*, 559 F.3d 1317 (Fed. Cir. 2009) (relating to disclosure in a U.S. reexamination proceeding of U.S. Office actions that were issued in a continuation application of the patent under reexamination). The Office is revising 37 CFR 1.704(d) to also embrace information first cited in a communication from the Office, as well as the communication (*e.g.*, Office action) in a counterpart foreign or international application. These revisions are intended to ensure compliance with AIPA in light of the evolving case law. Obviously, meeting the conditions set forth in 37 CFR 1.704(d) does not substitute for compliance with any relevant requirement of 37 CFR 1.97 or 1.98.

### Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

*Section 1.704:* Section 1.704(d) is amended to change “any communication from a foreign patent office in a counterpart application” to “any communication from a patent office in a counterpart foreign or international application or from the Office,” and to add to this definition “a communication that was issued by a patent office in a counterpart foreign or international application or by the Office.” This change revises § 1.704(d) to also embrace information first cited in a communication from the Office, as well as the communication (*e.g.*, Office action) in a counterpart foreign or international application or from the Office itself.

*Response to Comments:* The Office published a notice in April of 2011 proposing to change the rules of practice pertaining to patent term extension and adjustment to: (1) Indicate that in most circumstances an examiner reopening prosecution of the application after a notice of appeal has been filed will be considered a decision in the review reversing an adverse determination of patentability for purposes of patent term adjustment or extension purposes; and (2) exclude information disclosure statements resulting from the citation of information by a foreign patent office in a counterpart application that are promptly filed with the Office from the provisions for the reduction of patent term adjustment for applicant delays. *See Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (Apr. 6, 2011). The Office received eight written comments in response to this notice. The Office is revising its proposal concerning the reopening of prosecution of an application by the Office after a notice of appeal has been filed and will publish that proposal for public comment in a separate rulemaking. The comments and the Office’s responses to the comments pertaining to information disclosure statements resulting from the citation of information by a foreign patent office in a counterpart application that are promptly filed with the Office follow.

The comments on the Office’s proposed change to 37 CFR 1.704(d) pertaining to information disclosure statements supported the proposed change. The Office also received comments on provisions of 37 CFR 1.704 that the Office did not propose to change: (1) One comment suggested

changing the thirty day to a three month period; and (2) one comment indicated that an information disclosure statement filed after a notice of appeal should not result in reduction under 37 CFR 1.704(c)(8).

The Office did not propose to change the thirty-day period in 37 CFR 1.704(d). The Office adopted the provisions of 37 CFR 1.704(d) in 2000 to permit applicants to avoid a patent term adjustment impact if an information disclosure statement containing information that was cited in a communication from a foreign patent office in a counterpart application is promptly submitted to the Office. The Office does not consider an information disclosure statement filed more than thirty days after the information has been brought to applicant’s attention to be promptly submitted.

Regarding the second comment, 37 CFR 1.704(c)(8) does not provide for a reduction of any patent term adjustment simply because an applicant files an information disclosure statement after a notice of appeal has been filed.

### Rulemaking Considerations

*A. Regulatory Flexibility Act:* For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that the changes in this rulemaking will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

This rulemaking expands the exception to the patent term adjustment reduction for filing an information disclosure statement after a notice of allowance or reply, or for filing an information disclosure statement that requires a supplemental Office action, for information cited by a foreign patent office in a counterpart application that is promptly filed with the Office, to embrace information first cited by the Office in another application. This rulemaking does not add any additional requirements (including information collection requirements) or fees for patent applicants or patentees. Therefore, the changes in this rulemaking will not have a significant economic impact on a substantial number of small entities.

*B. Executive Order 12866 (Regulatory Planning and Review):* This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

*C. Executive Order 13563 (Improving Regulation and Regulatory Review):* The Office has complied with Executive

Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

**D. Executive Order 13132 (Federalism):** This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

**E. Executive Order 13175 (Tribal Consultation):** This rulemaking will not: (1) Have substantial direct effects on one or more Indian Tribes; (2) impose substantial direct compliance costs on Indian Tribal governments; or (3) preempt Tribal law. Therefore, a Tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

**F. Executive Order 13211 (Energy Effects):** This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

**G. Executive Order 12988 (Civil Justice Reform):** This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

**H. Executive Order 13045 (Protection of Children):** This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

**I. Executive Order 12630 (Taking of Private Property):** This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

**J. Congressional Review Act:** Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a "major rule" as defined in 5 U.S.C. 804(2).

**K. Unfunded Mandates Reform Act of 1995:** The changes in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

**L. National Environmental Policy Act:** This rulemaking will not have any effect on the quality of environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

**M. National Technology Transfer and Advancement Act:** The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

**N. Paperwork Reduction Act:** The rules of practice pertaining to patent term adjustment and extension have been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction

Act of 1995 (44 U.S.C. 3501 *et seq.*) under OMB control number 0651-0020. As discussed previously, this rulemaking expands the exception to the patent term adjustment reduction for filing an information disclosure statement after a notice of allowance or a reply, or for filing an information disclosure statement that requires a supplemental Office action, for information cited by a foreign patent office in a counterpart application that are promptly filed with the Office, to embrace information first cited by the Office in another application. This notice does not propose to add any additional requirements (including information collection requirements) or fees for patent applicants or patentees. Therefore, the Office is not resubmitting information collection packages to OMB for its review and approval because the changes in this rulemaking do not affect the information collection requirements associated with the information collections approved under OMB control number 0651-0020.

Notwithstanding any other provision of law, no person is required to respond to nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

#### List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

#### PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR Part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2).

■ 2. Section 1.704 is amended by revising paragraph (d) to read as follows:

#### § 1.704 Reduction of period of adjustment of patent term.

\* \* \* \* \*

(d)(1) A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this

section if it is accompanied by a statement that each item of information contained in the information disclosure statement:

(i) Was first cited in any communication from a patent office in a counterpart foreign or international application or from the Office, and this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement; or

(ii) Is a communication that was issued by a patent office in a counterpart foreign or international application or by the Office, and this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement.

(2) The thirty-day period set forth in paragraph (d)(1) of this section is not extendable.

\* \* \* \* \*

Dated: November 21, 2011.

**David J. Kappos,**

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

[FR Doc. 2011-30933 Filed 11-30-11; 8:45 am]

**BILLING CODE 3510-16-P**

## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Part 381

[Docket No. 2011-9 CRB NCEB COLA]

#### Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Royalty Judges announce a cost of living adjustment ("COLA") of 3.5% in the royalty rates that colleges, universities, and other educational institutions that are not affiliated with National Public Radio pay for the use of published nondramatic musical compositions in the ASCAP, BMI and SESAC repertoires. The COLA is based on the change in the Consumer Price Index from October 2010 to October 2011.

**DATES:** *Effective Date:* January 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** LaKeshia Keys, Program Specialist. Telephone: (202) 707-7658. Email: [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:** Section 118 of the Copyright Act, title 17 of the

United States Code, creates a compulsory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR parts 253 and 381.

Final regulations governing the terms and rates of copyright royalty payments with respect to certain uses by public broadcasting entities of published nondramatic musical works, and published pictorial, graphic, and sculptural works for the license period beginning January 1, 2008, and ending December 31, 2012, were published in the **Federal Register** on November 30, 2007. *See* 72 FR 67646. Pursuant to these regulations, on or before December 1 of each year, the Judges shall publish a notice of the change in the cost of living as determined by the Consumer Price Index (all urban consumers, all items ("CPI-U")) during the period from the most recent index published prior to the previous notice, to the most recent index published prior to December 1 of that year. *See* 37 CFR

381.10(a)(requiring publication of a revised schedule of rates for 37 CFR 381.5). Accordingly, the Judges are hereby announcing the change in the CPI-U and applying the annual COLA to the rates set out in 37 CFR 381.5(c).

The change in the cost of living as determined by the CPI-U during the period from the most recent index published before December 1, 2010, to the most recent index published before December 1, 2011, is 3.5%.<sup>1</sup> Rounding to the nearest dollar,<sup>2</sup> the royalty rates for the performance of published nondramatic musical compositions in the repertoires of ASCAP, BMI, and SESAC are \$312, \$312, and \$125, respectively.

#### List of Subjects in 37 CFR Part 381

Copyright, Music, Radio, Television, Rates.

#### Final Regulations

For the reasons set forth in the preamble, part 381 of title 37 of the Code of Federal Regulations is amended to read as follows:

<sup>1</sup> The most recent CPI-U figures are published in November of each year and use the period 1982-1984 to establish a reference base of 100. The index for October 2010 was 218.711, while the figure for October 2011 was 226.421.

<sup>2</sup> *See* 37 CFR 381.10(b) (adjusted royalty rates shall be "fixed at the nearest dollar").

## PART 381—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

■ 1. The authority citation for part 381 continues to read as follows:

**Authority:** 17 U.S.C. 118, 801(b)(1), and 803.

■ 2. Section 381.5 is amended by revising paragraphs (c)(1) through (3) to read as follows:

#### § 381.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

\* \* \* \* \*

(c) \* \* \*

(1) For all such compositions in the repertoire of ASCAP, \$312 annually.

(2) For all such compositions in the repertoire of BMI, \$312 annually.

(3) For all such compositions in the repertoire of SESAC, \$125 annually.

\* \* \* \* \*

Dated: November 23, 2011.

**James Scott Sledge,**

*Chief U.S. Copyright Royalty Judge.*

[FR Doc. 2011-30712 Filed 11-30-11; 8:45 am]

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## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Part 386

[Docket No. 2011-10 CRB Satellite COLA]

#### Cost of Living Adjustment to Satellite Carrier Compulsory License Royalty Rates

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Royalty Judges announce a cost of living adjustment ("COLA") of 3.5% in the royalty rates paid by satellite carriers under the satellite carrier compulsory license of the Copyright Act. The COLA is based on the change in the Consumer Price Index from October 2010 to October 2011.

**DATES:** *Effective Date:* January 1, 2012.

*Applicability Dates:* These rates are applicable for the period January 1, 2012, through December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** LaKeshia Keys, Program Specialist. Telephone: (202) 707-7658. Email: [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:** The satellite carrier compulsory license