Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0223 to read as follows:

§ 165.T01–0223 Safety Zone; 2012 Ironman US Championship Swim, Hudson River, Fort Lee, NJ.

(a) *Regulated Area.* All navigable waters of the Hudson River bound by a line drawn from the shoreline of the Palisades Interstate Parkway, approximately 2.8 NM North of the George Washington Bridge, Fort Lee, New Jersey, approximate position 40°53′44.93″ N 073°56′11.79″ W, east to a point 515 yards offshore, approximate position 40°53′40.00″ N 073°55′53.00″ W, south to a position 242 yards offshore, approximate position 40°51′30.00″ N 073°57′09.00″ W, west to the south corner of Ross Dock, Fort Lee, New Jersey, approximate position 40°51′33.77″ N 073°57′16.00″ W, then back to the point of origin.

(b) *Effective Period.* This rule will be effective from 6 a.m. to 10 a.m. on August 11, 2012.

(c) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative.* A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) *Official Patrol Vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(d) *Regulations.* (1) No vessels, except for participating safety vessels, will be allowed to transit the safety zone without the permission of the COTP.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(3) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated representative via VHF channel 16 or 718–354–4353 (Coast Guard Sector New York command center) to obtain permission to do so.

Dated: July 19, 2012.

G. Loebl,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2012–19080 Filed 8–3–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1, 5, 10, 11, and 41

[Docket No. PTO–P–2011–0072]

RIN 0651–AC66

Changes To Implement Miscellaneous Post Patent Provisions of the Leahy-Smith America Invents Act

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Leahy-Smith America Invents Act (AIA) expands the scope of information that any party may cite in a patent file to include written statements of a patent owner filed in a proceeding before a Federal court or the United States Patent and Trademark Office (Office) regarding the scope of any claim of the patent, and provides for how such information may be considered in *ex parte* reexamination, *inter partes* review, and post grant review. The AIA also provides for an estoppel that may attach with respect to the filing of an *ex parte* reexamination request subsequent to a final written decision in an *inter partes* review or post grant review proceeding. The Office is revising the rules of practice to implement these post-patent provisions, as well as other miscellaneous provisions, of the AIA.

DATES: *Effective date:* The changes in this final rule are effective on September 16, 2012.

FOR FURTHER INFORMATION CONTACT: Joseph F. Weiss, Jr. ((571) 272–7759), Legal Advisor, or Pinchus M. Laufer ((571) 272–7726), Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

SUPPLEMENTARY INFORMATION:

Executive Summary: Purpose: Section 6 of the AIA amends the patent laws to create new post-grant review proceedings and replace *inter partes* reexamination proceedings with *inter partes* review proceedings. Section 6 of the AIA also provides for an estoppel that may attach with respect to the filing of an *ex parte* reexamination request subsequent to a final written decision in a post grant review or *inter partes* review proceeding, expands the scope of information that any person may cite in the file of a patent to include written statements of a patent owner filed in a proceeding before a Federal court or the Office regarding the scope of any claim of the patent, and provide for how such patent owner statements may be considered in *ex parte* reexamination, *inter partes* review, and post grant review. Section 3(i) of the AIA replaces interference proceedings with derivation proceedings; section 7 redesignates the Board of Patent Appeals and Interferences as the Patent Trial and Appeal Board; section 3(j) replaces the title ''Board of Patent Appeals and Interferences'' with ''Patent Trial and Appeal Board'' in 35 U.S.C. 134, 145, 146, 154, and 305; and section 4(c) inserts alphabetical references to the subsections of 35 U.S.C. 112.

Summary of Major Provisions: This final rule primarily implements the provisions in section 6 of the AIA to provide for an estoppel that may attach to the filing of an *ex parte* reexamination request subsequent to a final written decision in a post grant review or *inter partes* review proceeding, and expands the scope of information that any person may cite in the file of a patent to include written statements of the patent owner filed in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of the patent.

This final rule revises the *ex parte* reexamination rules to require that a third party request for *ex parte* reexamination contain a certification by the third party requester that the statutory estoppel provisions of *inter partes* review and post grant review do not bar the third party from requesting *ex parte* reexamination.

This final rule revises the rules of practice pertaining to submissions to the file of a patent to provide for the submission of written statements of the patent owner filed by the patent owner in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of the patent. This final rule requires that such submissions must: (1) Identify the forum and proceeding in which patent owner filed each statement, and the specific papers and portions of the papers submitted that contain the statements; (2) explain how each statement is a statement in which patent owner took a position on the scope of any claim in the patent; (3) explain the pertinency and manner of applying the statement to at least one patent claim; and (4) reflect that a copy of the submission has been served on the patent owner, if submitted by a party other than the patent owner.

This final rule also revises the nomenclature in the rules of practice for consistency with the changes in sections 3(i), 3(j), 4(c), and 7 of the AIA.

Costs and Benefits: This rulemaking is not economically significant as that term is defined in Executive Order 12866 (Sept. 30, 1993).

Background: Sections 3(i) and (j) and section 4(c) of the AIA enact miscellaneous nomenclature and title changes. Section 3(i) of the AIA replaces interference proceedings with derivation proceedings; section 3(j) replaces the title ''Board of Patent Appeals and Interferences'' with ''Patent Trial and Appeal Board'' in 35 U.S.C. 134, 145, 146, 154, and 305; and section 4(c) inserts alphabetical designations to the subsections of 35 U.S.C. 112.

Section 6(g) of the AIA amends 35 U.S.C. 301 to expand the information that may be submitted in the file of an issued patent to include written statements of a patent owner filed in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of the patent. This amendment limits the Office's use of such written statements to determining the meaning of a patent claim in *ex parte* reexamination proceedings that have already been ordered and in *inter partes* review and post grant review proceedings that have already been instituted.

Section 6(a) and (d) of the Leahy-Smith American Invents Act also contains provisions (35 U.S.C. 315(e)(1) and 35 U.S.C. 325(e)(1)) estopping a third party requester from filing a request for *ex parte* reexamination, in certain instances, where the third party requester filed a petition for *inter partes* review or post grant review and a final written decision under 35 U.S.C. 318(a) or 35 U.S.C. 328(a) has been issued. The estoppel provisions apply to the real party in interest of the *inter partes* review or post grant review petitioner and any privy of such a petitioner.

Section 6(h)(1) of the AIA amends 35 U.S.C. 303 to expressly identify the authority of the Director to initiate reexamination based on patents and publications cited in a prior reexamination request under 35 U.S.C. 302.

Discussion of Specific Rules: The following is a discussion of the amendments to Title 37 of the Code of Federal Regulations, parts 1, 5, 10, 11, and 41, which are being implemented in this final rule:

Changes in nomenclature: The phrase ''Board of Patent Appeals and Interferences'' is changed to ''Patent Trial and Appeal Board'' in §§ 1.1(a)(1)(ii), 1.4(a)(2), 1.6(d)(9), 1.9(g), 1.17(b), 1.36(b), 1.136(a)(1)(iv), 1.136(a)(2), 1.136(b), 1.181(a)(1), 1.181(a)(3), 1.191, 1.198, 1.248(c), 1.701(a)(3), 1.701(c)(3), 1.702(a)(3), 1.702(b)(4), 1.702(e), 1.703(a)(5), 1.704(c)(9), 1.937(a), 1.959, 1.979(a), 1.979(b), 1.981, 1.983(a), 1.983(c), 1.983(d), 1.983(f), 11.5(b)(1), 11.6(d), 41.1(a), 41.2, 41.10(a) through (c), and 41.77(a), and in the title of 37 CFR part 41. Specific references are added to trial proceedings before the Patent Trial and Appeal Board to §§ 1.5(c), 1.6(d), 1.6(d)(9), 1.11(e), 1.136(a)(2), 1.136(b), 1.178(b), 1.248(c), 1.322(a)(3), 1.323, 1.985(a), 1.985(b), 1.993, 10.1(s), 11.10(b)(3)(iii), 11.58(b)(1)(i), 41.30, 41.37(c)(1)(ii), 41.67(c)(1)(ii), and 41.68(c)(1)(ii).

The phrase ''Board of Patent Appeals and Interferences'' in §§ 1.703(b)(4) and 1.703(e) will be changed to ''Patent Trial and Appeal Board'' in a separate rulemaking (RIN 0651–AC63).

Specific references are added to derivation proceedings before the Patent Trial and Appeal Board to §§ 1.136(a)(1)(v), 1.313(b)(4), 1.701(a)(1), 1.701(c)(1)(i) and (c)(1)(ii), 1.701(c)(2)(iii), 1.702(b)(2), 1.702(c), 1.703(b)(2), 1.703(b)(3)(iii), 1.703(c)(1) and (c)(2), 1.703(d)(3), and 5.3(b).

Sections 1.51, 1.57, 1.78, 41.37, 41.67, 41.110 and 41.201 are revised to substitute the current references to 35 U.S.C. 112, of first, second, and sixth paragraphs with references to 35 U.S.C. 112 subsections (a), (b), and (f). Section 1.78 is also revised to add ''other than the requirement to disclose the best mode'' following the references to 35 U.S.C. 112(a) for consistency with the changes to 35 U.S.C. 119(e) and 120 in section 15(b) of the AIA.

Section 1.59 is revised to refer to § 42.7.

Changes to ex parte reexamination procedure:

The undesignated center heading before § 1.501: The undesignated center heading is revised to read ''Citation of prior art and written statements.''

Section 1.501: Section 1.501 implements the amendment to 35 U.S.C. 301 by section 6(g)(1) of the AIA. New 35 U.S.C. 301(a)(2) provides for any

person to submit in the patent file written ''statements of the patent owner filed in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of a particular patent.'' Section 1.501, implementing 35 U.S.C. 301(a)(2), provides that a submission may include prior art and written patent owner claim scope statements. The term ''Federal court'' in 35 U.S.C. 301(a)(2) includes the United States Court of International Trade, which is a Federal court, but does not include the International Trade Commission, which is a Federal agency and not a Federal court.

Section 1.501(a): In light of the comments, the scope of what may be submitted has been expanded relative to the proposed rule because the final rule does not prohibit the submission of written statements ''made outside of a Federal court or Office proceeding and later filed for inclusion in a Federal court or Office proceeding.'' Section 1.501(a)(1) provides for the submission to the Office of prior art patents or printed publications that a person making the submission believes to have a bearing on the patentability of any claim of a particular patent. Section 1.501(a)(2) permits any person to submit to the Office statements of the patent owner that were filed by the patent owner in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of the patent. As long as the statement was filed by the patent owner in the proceeding, the statement is eligible for submission under § 1.501(a)(2) even if originally made outside the proceeding. Permitting submission of these claim scope statements is intended to limit a patent owner's ability to put forward different positions with respect to the prior art in different proceedings on the same patent. *See* H.R. Rep. No. 112–98, Part 1, at page 46 (2011) (''[t]his addition will counteract the ability of patent owners to offer differing interpretations of prior art in different proceedings.''). Any papers or portions of papers that contain the patent owner claim scope statement submitted under this paragraph must be accompanied by any other documents, pleadings, or evidence from the proceeding in which the statement was filed that address the statement. Where appropriate, the papers or portions of papers that contain the statement and accompanying information must be submitted in redacted form to exclude information subject to an applicable protective order.

Section 1.501(a)(3) requires that submissions under § 1.501(a)(2) must identify: (1) The forum and proceeding in which patent owner filed each statement; (2) the specific papers and portions of the papers submitted that contain the statement; and (3) how each statement submitted is a statement in which patent owner took a position on the scope of any claim in the patent. Identification of the portions of the papers required by § 1.501(a)(3)(ii) can be satisfied, for example, by citing to the documents and specific pages of those documents where the patent owner claim scope statements are found. The requirement of § 1.501(a)(3)(iii) ensures that the statement is one in which a patent owner has taken a position on claim scope in a proceeding and not merely a restatement of a position asserted by another party. Other information can, but is not required to, be provided by the submitter to assist the Office in readily identifying the patent owner claim scope statement, such as (1) information regarding the status of the proceeding; and (2) the relationship of the proceeding to the patent.

Section 1.501(b): Section 1.501(b)(1) implements the 35 U.S.C. 301(b) requirement that the submission include an explanation in writing of the pertinency and manner of applying the prior art or written statements to at least one patent claim. Section 1.501(b)(1) requires a submitter to explain in writing the pertinence and manner of applying any prior art submitted under § 1.501(a)(1) and any written statement and accompanying information submitted under § 1.501(a)(2) to at least one claim of the patent in order for the submission to become a part of the official file of the patent. Where a patent owner claim scope statement and accompanying information are submitted along with prior art, an explanation as to how each patent owner claim scope statement and each prior art reference applies to at least one claim must be included with the submission in order for the submission to become part of the patent file. Section 1.501(b)(1) requires an explanation of the additional information required by 35 U.S.C. 301(c) to show how the additional information addresses and provides context to the patent owner claim scope statement, thereby providing a full understanding as to how the cited information is pertinent to the claim(s).

Section 1.501(b)(2) incorporates the second sentence of former § 1.501(a), which permits a patent owner submitter to provide an explanation to distinguish the claims of the patent from the submitted prior art. Section 1.501(b)(2) also provides a patent owner submitter with the opportunity to explain how the claims of the patent are patentable in view of any patent owner claim scope statement and additional information filed under § 1.501(a)(2), along with any prior art filed under § 1.501(a)(1).

Section 1.501(c): Section 1.501(c) restates the last sentence of prior § 1.501(a) directed to the timing for a submission under §§ 1.502 and 1.902 when there is a reexamination proceeding pending for the patent in which the submission is made.

Section 1.501(d): Section 1.501(d) restates former § 1.501(b) that permits the person making the submission to exclude his or her identity from the patent file by anonymously filing the submission.

Section 1.501(e): Section 1.501(e) requires that a submission made under § 1.501 must reflect that a copy of the submission by a party other than the patent owner has been served upon patent owner at the correspondence address of record in the patent, and that service was carried out in accordance with § 1.248. Service is required to provide notice to the patent owner of the submission. The presence of a certificate of service that is compliant with § 1.248(b) is *prima facie* evidence of compliance with § 1.501(e). A submission will not be entered into the patent's Image File Wrapper (IFW) if it does not include proof of service compliant with § 1.248(b).

Section 1.501(f): The provisions of proposed § 1.501(f) have been incorporated with specificity in §§ 1.515(a) and 1.552(d) rather than adopted as a separate paragraph of § 1.501. The proposed codification in § 1.501(f) of the limitation set forth in 35 U.S.C. 301(d) on the use of a patent owner claim scope statement by the Office was unnecessary in view of the language of § 1.515(a) and § 1.552(d).

Section 1.510: This final rule revises § 1.510(a) and (b)(2), and adds § 1.510(b)(6) to implement provisions of the AIA.

Section 1.510(a) is revised to reflect the estoppel limitations placed upon the filing of a request for *ex parte* reexamination by 35 U.S.C. 315(e)(1) and 325(e)(1). In light of the comments, the scope of the estoppel provisions is interpreted to only prohibit the filing of a subsequent request for *ex parte* reexamination.

Section 1.510(b)(2) is revised to require that any statement of the patent owner submitted pursuant to § 1.501(a)(2), which is relied upon in the detailed explanation, explain how that statement is being used to determine the

proper meaning of a patent claim in connection with prior art applied to that claim. Section 1.510(b)(2) requires that the ''detailed explanation'' of applying prior art provided in the request for *ex parte* reexamination must explain how each patent owner claim scope statement is being used to determine the proper meaning of each patent claim in connection with the prior art applied to that claim. The explanation will be considered by the Office during the examination stage, if reexamination is ordered. At the order stage, the Office will not consider any patent owner claim scope statement discussed in the detailed explanation of the request. *See* 35 U.S.C. 301(d)

Section 1.510(b)(6) requires that the request contain a certification by the third party requester that the statutory estoppel provisions of *inter partes* review and post grant review do not bar the third party from requesting *ex parte* reexamination. The basis for this requirement is the estoppel provisions of *inter partes* review and post grant review provided in new 35 U.S.C. 315(e)(1) and 325(e)(1), respectively, which identify when a petitioner for *inter partes* review or post grant review, or a real party in interest or privy of the petitioner, may not file a request for *ex parte* reexamination. The certification required under § 1.510(b)(6) is consistent with the real party in interest identification certification practice employed in existing *inter partes* reexamination.

In light of the comments, the final rule does not require an *ex parte* reexamination requester to identify themselves upon the filing of the request. The certification requirement of § 1.510(b)(6), coupled with a party's § 11.18 certification obligations when transacting business before the Office, are considered sufficient to ensure compliance with the new statutory estoppel requirements. A real party in interest that wishes to remain anonymous when filing a request for reexamination under § 1.510 can do so by utilizing the services of a registered practitioner. In such an instance, the registered practitioner submitting a request for reexamination on behalf of the real party in interest would be certifying that the real party in interest was not estopped from filing the request. Conversely, an individual filing a request for reexamination under § 1.510 on behalf of himself cannot remain anonymous as he is required to sign the document that includes the § 1.510(b)(6) certification.

Section 1.515: Section 1.515 is revised to add: ''A statement and any accompanying information submitted pursuant to § 1.501(a)(2) will not be considered by the examiner when making a determination on the request.'' 35 U.S.C. 301(d) states: ''A written statement submitted pursuant to subsection (a)(2), and additional information submitted pursuant to subsection (c) [of 35 U.S.C. 301], shall not be considered by the Office for any purpose other than to determine the proper meaning of a patent claim in a proceeding that is ordered * * * pursuant to section 304.'' Thus, a patent owner claim scope statement will not be considered when making the determination of whether to order *ex parte* reexamination under 35 U.S.C. 303. *See also* H.R. Rep. No. 112–98, Part 1, at page 46 (2011). In making the § 1.515(a) determination of whether to order *ex parte* reexamination, the Office will give the claims the broadest reasonable interpretation consistent with the specification, except in the case of an expired patent. *See Ex parte Papst-Motoren,* 1 USPQ2d 1655 (Bd. Pat. App. & Inter. 1986); *In re Yamamoto,* 740 F.2d 1569 (Fed. Cir. 1984); *see also Manual of Patent Examining Procedure* § 2258 I.(G) (8th ed. 2001) (Rev. 8, July 2010) (MPEP). If reexamination is ordered, the patent owner statements submitted pursuant to 35 U.S.C. 301(a)(2) will be considered to the fullest extent possible when determining the scope of any claims of the patent which are subject to reexamination.

The section has also been revised to replace ''mailed'' with ''given or mailed'' regarding the manner the Office may employ to notify patent owner of a determination on a request for *ex parte* reexamination. Usage of the term ''given'' tracks the relevant statutory language of 35 U.S.C. 304 and offers the Office flexibility to employ alternative means of communication to streamline patent reexamination and customer interaction, *e.g.,* Web-based forms of notification.

Section 1.552: Section 1.552 is revised to include new § 1.552(d) to reflect the amendment of 35 U.S.C. 301 by section 6(g)(1) of the AIA. Section 1.552(d) states: ''Any statement of the patent owner and any accompanying information submitted pursuant to § 1.501(a)(2) which is of record in the patent being reexamined (which includes any reexamination files for the patent) may be used after a reexamination proceeding has been ordered to determine the proper meaning of a patent claim when applying patents or printed publications.'' As discussed above, 35 U.S.C. 301(a)(2) permits a submission under 35 U.S.C. 301 to contain written ''statements of the patent owner filed in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of a particular patent.'' Written statements cited under 35 U.S.C. 301(a)(2) may be considered after an *ex parte* reexamination proceeding has been ordered. However, the statement may not be considered in determining whether to order *ex parte* reexamination under 35 U.S.C. 303, because 301(d) prohibits the use of the statement ''by the Office for any purpose other than to determine the proper meaning of a patent claim in a proceeding that is ordered or instituted pursuant to section 304, 314, or 324.'' *See* 35 U.S.C. 301(d). *See also* H.R. Rep. No. 112–98, Part 1, at page 46 (2011). Therefore, the Office can only consider such statements after the proceeding has been ordered or instituted.

Comments and Responses to Comments: The Office published a notice on January 5, 2012, proposing to change the rules of practice to implement the post patent and other miscellaneous provisions of the AIA of sections 3 and 6 of the AIA. *See Changes to Implement Miscellaneous Post Patent Provisions of the Leahy-Smith America Invents Act,* 77 FR 442 (Jan. 5, 2012). The Office received seventeen written comments (from intellectual property organizations, industry, law firms, individual patent practitioners, and the general public) in response to this notice. The comments and the Office's responses to the comments follow:

Comment 1: A number of comments stated that the proposed regulatory exclusion of patent owner claim scope statements ''made outside of a Federal court or Office proceeding and later filed for inclusion in a Federal court or Office proceeding'' was overly restrictive and inconsistent with the statute. These comments suggested that patent owner statements filed in a proceeding in a Federal court or the Office should be entered regardless of when and where the original statements were made, consistent with the phrase ''statements of the patent owner filed in a proceeding'' as set forth in 35 U.S.C. 301 and the stated intent of Congress to limit a patent owner's ability to take different positions in different proceedings.

Response: In response to the comments, § 1.501(a)(2) is revised to permit any person to submit into the official file of a patent written statements of the patent owner that were filed by the patent owner in a proceeding before a Federal court or the Office in which the patent owner took

a position with regard to the scope of any claim in the patent. This revision, relative to the proposed rule, encompasses any statements a patent owner files in a proceeding in which the patent owner took a position on the scope of any claim of a particular patent. As long as the statement was filed by the patent owner in the proceeding, the statement is eligible for submission under § 1.501(a)(2) even if originally made outside the proceeding. Submissions are limited to statements filed by the patent owner, as the statement must be a position that patent owner took in the proceeding with respect to the scope of a claim. The rule focuses on whether the patent owner filed the statement in a proceeding before a Federal court or the Office. This interpretation is consistent with the stated intent of Congress to prevent a patent owner from taking different positions in different proceedings

Comment 2: Several comments requested clarification of the meaning of ''patent owner'' as used in § 1.501(a)(2). These comments questioned whether the term ''patent owner'' encompasses parties who may make written statements regarding claim scope on behalf of the patent owner.

Response: The term ''patent owner'' is synonymous with the term ''patentee''. Patentee is defined by 35 U.S.C. 100 to include the entity ''not only * * * to whom the patent was issued but also the successors in title to the patentee.'' Therefore, the scope of the term ''patent owner'' encompasses the party or parties having title to the patent. The rule has been modified to require the submitter to identify how any statement submitted under § 1.501(a)(2) is a written statement of the patent owner in which the patent owner took a position on the scope of any claim in the patent.

Comment 3: A number of comments questioned whether a patent owner claim scope statement under 35 U.S.C. 301 is limited to statements made about that specific patent or whether it extends to statements made about claims in related patents and applications.

Response: A patent owner claim scope statement must be directed to the claims of a particular patent to be eligible for entry into the official file of that patent. 35 U.S.C 301 does not provide for the submission of a patent owner claim scope statement not directed to any claim of that particular patent or a statement that is directed to claims in a related patent or application.

Comment 4: Several comments suggested that properly submitted patent owner claim scope statements should be considered when the Office is deciding whether to order or institute a post-patent proceeding.

Response: Use of a patent owner claim scope statement is governed by statute. New 35 U.S.C. 301(d) states in pertinent part, ''A written statement * * * shall not be considered by the Office for any purpose other than to determine the proper meaning of a patent claim in a proceeding that is ordered or instituted pursuant to section 304, 314, or 324.'' The statute prohibits the use of the statement for any purpose other than determining the claim scope in a proceeding that has already been ordered or instituted. Therefore, the Office may not, and will not, consider such statements when the Office is deciding whether to order or institute a post-patent proceeding.

Comment 5: Several comments suggested that the Office adopt a ''summary judgment like'' procedure if the patent owner statement could not be used when the Office makes a decision to order or institute a post-patent proceeding. In this proposed procedure, a party could move to expedite the post-patent proceeding to final disposition based upon the previously unconsidered patent owner claim scope statement.

Response: A properly submitted patent owner claim scope statement may be used by the Office during a post-patent proceeding in accordance with 35 U.S.C. 301(d). The effect of a patent owner claim scope statement on the merits of an ordered or instituted post-patent proceeding will be addressed on a case-by-case basis.

Comment 6: Several comments suggested that third parties should not be required to serve a copy of a submission under 35 U.S.C. 301 on the patent owner, as this may compromise the anonymity of the submitter. Suggestions were made for other ways to notify a patent owner that a submission was made, including sending a notification by the Office to the patent owner or publishing relevant patent information in the Official Gazette when a submission is made.

Response: A patent owner should be fully and timely informed as to the content of his or her patent file. As a result, when a third party files a submission under 35 U.S.C. 301, contemporaneous service on the patent owner is necessary. *See* MPEP § 2208. Direct service is the most efficient manner of notifying the patent owner as to the content of his or her patent file. If the submission under § 1.501 is made by a registered practitioner, the real party in interest need not be identified. Thus, service and proof of service in accordance with § 1.248 can be achieved while preserving the anonymity of the real party in interest.

Comment 7: One comment suggested that proposed § 1.501(e) be clarified to indicate that service is only required when an entity other than the patent owner files a submission under § 1.501. A number of comments requested clarification regarding what the Office means by ''a *bona fide* attempt of service.'' These comments questioned whether it means that where a third party is notified that service was not successful, the entire submission would need to be resubmitted with proof that service of the patent owner was attempted. Several comments suggested that if the submitter becomes aware that service of the patent owner was not successful, the submitter should, as set forth in proposed § 42.105(b), have the option of contacting the Office to discuss alternative modes of service.

Response: The Office's proposal in § 1.501(e) to require proof of a *bona fide* attempt of service has not been implemented. As promulgated in this final rule, § 1.501(e) provides that a person other than the patent owner making a submission pursuant to § 1.501(a) must include a certification that a copy of a submission under § 1.501 has been served in its entirety upon the patent owner at the address as provided for in § 1.33(c). Section 1.248(a) governs the manner of service and provides different ways to achieve service, including publication in the Official Gazette if service is otherwise unsuccessful. *See* § 1.248(a)(5).

Comment 8: A number of comments requested guidance on a patent owner's ability to respond to a third party's submission under § 1.501, and the procedure a patent owner should follow if such a response is permitted. These comments also questioned whether a third party submission can be challenged as non-compliant and whether a non-compliant submission can be expunged or redacted from the official file of a patent.

Response: The rules do not provide a mechanism by which a patent owner can file a response to a third party submission under § 1.501. A patent owner may, however, at any time, file a submission in accordance with 35 U.S.C. 301 and § 1.501 containing the same prior art and/or patent owner claim scope statement as that of a third party. The patent owner may include a written explanation of how the claims of the patent differ from the prior art or any patent owner claim scope statement and accompanying information submitted by the third party. If the Office inadvertently entered a non-compliant submission into the official

file of a patent, the patent owner may request review of the determination to enter the submission by way of a petition under § 1.181.

Comment 9: A number of comments requested clarification as to what would constitute a sufficient explanation of the pertinence and manner of applying the prior art or patent owner claim scope statement to at least one claim in the patent as required in § 1.501(b)(1). These comments questioned whether the submission could include affidavits and declarations.

Response: Guidance regarding the content of a submission under 35 U.S.C. 301, with exemplary explanations, can be found in MPEP § 2205. Pursuant to the guidance in MPEP § 2205, affidavits and declarations are permitted to explain the pertinence and manner of applying the prior art or patent owner claim scope statement.

Comment 10: A number of comments requested that the Office clarify what it means when referring to information that ''addresses'' the patent owner claim scope statement. These comments also suggested that the Office limit the scope of accompanying information that could be submitted with a patent owner claim scope statement to avoid voluminous submissions that would detract from the usefulness of such submissions. It was further suggested that the meaning of information that ''addresses the written statement'' (35 U.S.C. 301(c)) should be narrowly defined and limited to information or portions of documents that directly refer to the statement or have been used to support or contradict the statement.

Response: The party submitting the patent owner claim scope statement should ensure that the accompanying information filed with the submission is sufficient to provide context for the statement, so the Office can properly weigh its probative value in construing the proper meaning of a claim. Insufficient or unnecessarily voluminous accompanying information will diminish the probative value of any submitted patent owner claim scope statement in determining the proper meaning of a claim. Documents that address the patent owner claim scope statement may include documents that the patent owner claim scope statement refers to or relies upon for support, and documentary evidence of what prompted the patent owner claim scope statement to be filed in the Federal court or Office proceeding. Additionally, documents submitted in support, response, or rebuttal of the patent owner claim scope statement would all be considered additional information ''addressing'' the statement. These examples are illustrative only and are not intended to be exhaustive or limiting. The Office encourages submitters to present focused filings correlating the patent owner claim scope statement to the items of additional information in order to provide sufficient context for the claim scope statement filed in a court or Office proceeding and to assist the Office in construing the proper meaning of a claim.

Comment 11: One comment suggested that the Office require the submission of identifying information which was previously proposed to be optional, including: (1) The forum in which the statement was made; (2) the Federal court or Office proceeding designation; (3) the status of the proceeding; (4) the relationship between the proceeding and the patent; (5) an identification of the specific papers in the proceeding containing the statement; and (6) an identification of the portions of the papers relevant to the written statement.

Response: Consistent with the comment section 1.501(a)(3) requires a submitter to identify the forum and proceeding in which patent owner filed each statement and the specific papers and portions of the papers submitted that contain the patent owner claim scope statement. The Office did not amend § 1.501(a)(3) to require the status of the proceeding or its relationship to the patent as they are not needed by the Office when determining if the submission is proper. Submissions that do not include sufficient indicia to conclude that a submitted patent owner claim scope statement, and all additional information, and were filed in a Federal court or Office proceeding will not be entered into the official file of a patent.

Comment 12: One comment questioned whether there is a continuing duty to supplement the accompanying information submitted with a patent owner claim scope statement.

Response: The statute does not impose a continuing duty to supplement any submissions made pursuant to 35 U.S.C. 301(a)(2). Should a party determine that a subsequent submission is needed, one can be filed in accordance with § 1.501. Any subsequent submission filed by a party other than the patent owner, during the pendency of a reexamination proceeding, will not be considered in that reexamination proceeding.

Comment 13: One comment suggested that § 1.501(c) be amended to permit the submission by a third party of a patent owner claim scope statement filed in a pending litigation to be entered into a pending reexamination proceeding.

Response: The comment's proposed change to § 1.501(c) cannot be adopted as it is contrary to statute. 35 U.S.C. 305 dictates that the reexamination will be conducted *ex parte* after the time period for filing the patent owner statement and reply provided for in 35 U.S.C. 304 has expired. A third party submission of alleged patent owner claim scope statements, even if compliant with 35 U.S.C. 301, would constitute prohibited third party participation as to the merits of an *ex parte* proceeding. MPEP § 2282, however, provides that in order to ensure a complete file, with updated status information regarding prior or concurrent proceedings regarding the patent under reexamination, the Office will, at any time, accept from any parties, for entry into the reexamination file, copies of notices of suit and other proceedings involving the patent and bare notice of decisions or papers filed in the court from litigations or other proceedings involving the patent, *e.g.* a final written decision in an *inter partes* review or post grant review of the patent subject to the *ex parte* reexamination. *See* MPEP § 2282.

Patent owners are reminded that § 1.565(a) requires the patent owner to ''inform the Office of any prior or concurrent proceedings in which the patent is or was involved such as interferences, reissues, *ex parte* reexaminations, *inter partes* reexaminations, or litigation and the results of such proceedings.'' Because § 1.565(a) uses open language to provide a non-exhaustive listing of proceedings of which patent owner must inform the Office, the rule also includes *inter partes* review and post grant review proceedings, once they become effective.

Comment 14: One comment questioned why there is a difference in the required explanations of relevance in a post-patent submission under § 1.501 and in a preissuance submission under § 1.290.

Response: The difference between the regulatory requirements for the accompanying explanation of a preissuance submission and the accompanying explanation of a post-issuance submission is due to the different statutory requirements that govern each respective submission's explanation. *Cf.* new 35 U.S.C. 122(e) with 35 U.S.C. 301(b). New 35 U.S.C. 122(e)(2)(A) requires a preissuance submission to include a concise description of the asserted relevance of each submitted document, whereas 35 U.S.C. 301(b) requires the person citing prior art or written statements to

provide an explanation of the pertinence and manner of applying the prior art or written statements to at least one claim of the patent.

Comment 15: One comment suggested that the ''period of enforceability of a patent'' in 35 U.S.C. 301 should be interpreted to begin upon the issuance of a Notice of Allowance, thus authorizing the submission of prior art in the official files of allowed applications.

Response: The comment's position that the language of 35 U.S.C. 301 should be interpreted to authorize the submission of prior art in allowed applications is not in accord with the express language of the provision New 35 U.S.C. 301(a)(1) and (2) both use the phrase ''claim of any particular patent. ''New 35 U.S.C. 301(b) also uses the term ''patent'' with regard to which official files are eligible for entry of a submission under 35 U.S.C. 301. Therefore, 35 U.S.C. 301 only permits submissions of prior art and written statements into the official files of issued patents, which by statute does not include patent applications, even those in which a Notice of Allowance has issued.

Comment 16: A number of comments requested that the Office to clarify how a patent owner claim scope statement under § 1.501(a)(2) differs from a patent owner statement under § 1.530(b).

Response: Under § 1.530(b), a patent owner may file a statement in an *ex parte* reexamination proceeding, in response to an order granting reexamination, to make comments on the substantial new question of patentability identified in the order for reexamination. Under § 1.501(a)(2), any party may submit in a patent file a written statement of the patent owner that has been filed in a Federal court or Office proceeding in which the patent owner took a position on the scope of any claim in the patent.

Comment 17: A number of comments suggested that the definition of a Federal court should include the International Trade Commission (ITC).

Response: New 35 U.S.C. 301(a)(2) limits statements eligible for submission to those filed in a proceeding before a Federal court or the Office. The International Trade Commission (ITC) is a Federal agency and not a Federal court. The ITC is an independent Federal agency established by 19 U.S.C. 1330 to conduct investigations under 19 U.S.C. 1337, and not a Federal court.

Comment 18: Several comments requested clarification of the phrase ''proper meaning of a patent claim'' as set forth in 35 U.S.C. 301(d) and in § 1.510(b)(2) and § 1.552(d). The comments suggested that claim construction of patent claims in post-patent proceedings at the Office should be based on the same standards as patent claim construction in the courts, following *Phillips* v. *AWH Corp.,* 415 F.3d 1303 (Fed. Cir. 2005) and *Thorner* v. *Sony Computer Entertainment Inc.,* 669 F.3d 1362 (Fed. Cir. 2012). These comments also questioned how statements by patent owners will be used to determine the proper meaning of a patent claim.

Response: The Office standard for claim construction, *i.e.,* ''the proper meaning of a claim,'' is the ''broadest reasonable interpretation'' (BRI) consistent with the specification. *See In re Am. Acad. of Sci. Tech Ctr.,* 367 F.3d 1359, 1364 (Fed. Cir. 2004), *In re Morris,* 127 F.3d 1048, 1053–54 (Fed. Cir. 1997), and *In re Zletz,* 893 F.2d 319, 321 (Fed. Cir. 1989); *see also* MPEP § 2111. During reexamination, claims of an unexpired patent will be given the broadest reasonable interpretation consistent with the specification. *See* In re Yamamoto, 740 F.2d at 1571–72 (Fed. Cir. 1984). In a reexamination proceeding involving claims of an expired patent, claim construction is performed pursuant to the principles set forth in *Ex parte Papst-Motoren,* 1 USPQ2d 1655 (Bd. Pat. App. & Inter. 1986); and MPEP § 2258 I.(G) (8th ed. 2001) (Rev. 8, July 2010). Written statements submitted pursuant to 35 U.S.C. 301(a)(2) will not be used when ordering reexamination, but will be used during reexamination to assist in construing the claims. *See* 35 U.S.C. 301(d).

Comment 19: Several comments suggested the language in proposed § 1.501(b)(2) be amended to make clear that the accompanying information filed with the patent owner claim scope statement is not limited to information of the patent owner.

Response: The language in § 1.501(b)(2) has been amended to make clear that the accompanying information filed with the patent owner claim scope statement is not limited to information of the patent owner.

Comment 20: A number of comments suggested that the requirement for identification of the real party in interest in an *ex parte* reexamination proceeding proposed in § 1.510(b)(7) not be implemented by the final rule. These comments suggested that requiring identification of the real party in interest could have a chilling effect on the submission of *ex parte* reexamination requests.

Response: The Office's proposal to require an *ex parte* reexamination requester to identify themselves upon filing of the request has not been implemented. Instead, the Office will rely upon the *ex parte* reexamination requester's certification required by § 1.510(b)(6).

Comment 21: Several comments suggested that the estoppel provisions, as they apply to *ex parte* reexamination proceedings, only estop a party from requesting *ex parte* reexamination after a final decision in a post grant review or an *inter partes* review. These comments also suggested that the estoppel provisions do not apply to pending *ex parte* reexamination proceedings because the Office, not the third party requester, maintains an *ex parte* reexamination proceeding after the reexamination is ordered. One comment further suggested that the estoppel provisions should not estop a pending *ex parte* reexamination proceeding from continuing because once the Office determines that there is a substantial new question of patentability (SNQ), the *ex parte* reexamination statute mandates that the Office issue a reexamination certificate that resolves the SNQ. One comment requested that the rule specifically state that the estoppel provisions bar the initiation or the maintenance of an *ex parte* reexamination.

Response: Section 1.510 has been revised vis-a-vis the previous rule to implement the new statutory estoppel provisions with respect to requests for *ex parte* reexamination. The comment that the scope of the estoppel provisions precludes maintenance of pending reexamination proceedings is not in accord with the language of the statute. Under certain circumstances, sections 315(e) and 325(e) prohibit a requester from requesting a new proceeding or maintaining an ongoing proceeding in the Office. With respect to reexamination, it is the Office that maintains a reexamination proceeding, not the requester. Accordingly, the estoppel provisions do not apply to pending reexamination proceedings.

Comment 22: Several comments suggested that the estoppel provisions of 35 U.S.C. 315(e) and 325(e) do not apply to requests for *ex parte* reexamination in view of 35 U.S.C. 302 which provides that any person at any time can file such a request.

Response: The legislative history of 35 U.S.C. 315(e) and 35 U.S.C. 325(e) indicates that the estoppel provision applies ''* * * to subsequent administrative proceedings. A party that uses *inter partes* review is estopped from raising in a subsequent PTO proceeding (such as an *ex parte* reexam or *inter partes* review) any issue that it raised or reasonably could have raised

in the *inter partes* review.'' *See* H.R. Rep. No. 112–98, Part 1, at page 47 (2011). [Internal quotations and emphasis removed]. Therefore, the new estoppel provisions apply to the filing of a subsequent request for *ex parte* reexamination by a requester that previously instituted a review that resulted in a final written decision.

Comment 23: One comment suggested that when there is an *ex parte* reexamination proceeding co-pending with an *inter partes* review or post-grant review, the reexamination should be either stayed or merged. By contrast, another comment suggested that an *ex parte* reexamination proceeding co-pending with an *inter partes* review or post grant review, should not be merged given the statutory requirement of 35 U.S.C. 305 to conduct *ex parte* reexamination with special dispatch.

Response: The Director possesses statutory discretion as to the manner of handling multiple proceedings and matters pending before the Office for a single patent. *See* 35 U.S.C. 315(d) and 35 U.S.C. 325(d). Therefore, a determination whether to stay, transfer, consolidate (merge) or terminate any proceeding(s) on the same patent is within the sole discretion of the Office, and will be addressed on a case-by-case basis.

Comment 24: One comment requested clarification as to who is a real party in interest or a privy for purposes of the certification in § 1.510(b)(6). The comment suggested that the common law test of ''control'' be used, similar to and consistent with the control test discussed in *Practice Guide for Proposed Trial Rules,* 77 FR 6868, 6870–71 (Feb. 9, 2012), and *Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions,* 77 FR 6879, 6883–84 (Feb. 9, 2012) (''Board Notices''). The comment also suggested that certification should apply only to those entities that have controlled a post-issuance proceeding and that the identification requirement is exclusively applicable to them. The comment further suggested that any challenges to the non-estoppel certification should occur before a determination to order reexamination is made.

Response: The ''control test'' referred to by the comment may be used as guidance when determining whether the certification required by § 1.510(b)(6) is proper with regard to a real party in interest. A requester may also consult the Office's *inter partes* reexamination certification policy for additional guidance concerning the definition of a real party in interest. *See* MPEP § 2612. Similarly, privity is determined on a case-by-case basis. Therefore, whether a requester is a privy to an estopped party must be decided by evaluating all the facts and circumstances of each individual situation.

Section 1.510(b)(6) requires a third party requester to certify that the estoppel provisions do not prohibit the filing of the *ex parte* reexamination request, and the Office will not generally look beyond this required certification. If the Office becomes aware of facts that call the certification into question, the Office will determine, on a case-by-case basis, whether the request for *ex parte* reexamination is prohibited by statute.

Comment 25: A number of comments suggested that the statement identifying the real party in interest, required by proposed § 1.510(b)(7), be deleted because it is unnecessary in view of the certification in § 1.510(b)(6). Several of these comments pointed out that should the Office retain the requirement for identification of the real party in interest, procedures for safeguarding anonymity are critical.

Response: The Office's proposal in § 1.510(b)(7) to require an *ex parte* reexamination requester to identify themselves upon the filing of the request has not been implemented. The certification requirement of § 1.510(b)(6), coupled with a party's obligations under § 11.18 when transacting business before the Office, are considered sufficient to ensure compliance with the new statutory estoppel requirements. A real party in interest that wishes to remain anonymous can do so by utilizing the services of a registered practitioner. In such an instance, the registered practitioner submitting a request for reexamination on behalf of the real party in interest would be certifying that the real party in interest was not estopped from filing the request. Conversely, an individual filing a request for reexamination on behalf of himself cannot remain anonymous as he is required to sign the document that includes the § 1.510(b)(6) certification.

Rulemaking Considerations

A. *Administrative Procedure Act (APA):* This final rule revises existing rules governing prior art citations in a patent file and *ex parte* reexamination to implement the following provisions of sections 3 and 6 of the AIA: (1) Section 6(g) which amends 35 U.S.C. 301, to expand the scope of information that may be submitted in the file of an issued patent to include patent owner claim scope statements; (2) the provisions of sections 6(a) and 6(d) (which newly enact *inter partes* review and post grant review, respectively) that provide for estoppels effective as to proceedings before the Office, including but not limited to reexamination; and (3) sections 3(j) and 7 which change the title ''Board of Patent Appeals and Interferences'' to ''Patent Trial and Appeal Board,'' and change references to interference proceedings to derivation proceedings.

Therefore, the changes in this final rule are merely procedural and/or interpretive. *See Bachow Communs., Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (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 rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'') (quoting 5 U.S.C. 553(b)(A)). The Office, however, published proposed changes for comment as it sought the benefit of the public's views on the Office's proposed implementation of this provision of the AIA.

B. *Regulatory Flexibility Act:* As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. *See* 5 U.S.C. 603. The Office received no comments on this subject.

C. *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).

D. *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.

E. *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).

F. *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).

G. *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).

H. *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).

I. *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).

J. *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).

K. *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.*), the United States Patent and Trademark Office will submit a report containing this final rule and other required information to the United States Senate, the United States 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 final rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

L. *Unfunded Mandates Reform Act of 1995:* The final changes in this notice 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.*

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

N. *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.

O. *Paperwork Reduction Act:* The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This final rule makes changes to the rules of practice that would impose new information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). Accordingly, the Office submitted a proposed information collection to OMB for its review and approval when the notice of proposed rulemaking was published. The Office also published the title, description, and respondent description of the information collection, with an estimate of the annual reporting burdens, in the notice of proposed rulemaking (*See Changes to Implement Miscellaneous Post Patent Provisions of the Leahy-Smith America Invents Act,* 77 FR 447). The Office did not receive any comments on the proposed information collection. The changes adopted in this final rule do not require any further change to the proposed information collection. Accordingly, the Office has resubmitted the proposed information collection to OMB. The proposed information collection is available at the OMB's Information Collection Review Web site (*www.reginfo.gov/public/do/PRAMain*).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a 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

37 CFR Part 1

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

37 CFR Part 5

Classified information, Foreign relations, Inventions and patents.

37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

37 CFR Part 11

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, 37 CFR parts 1, 5, 10, 11, and 41 are 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), unless otherwise noted.

■ 2. Section 1.1 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 1.1 Addresses for non-trademark correspondence with the United States Patent and Trademark Office.

(a) * * *

(1) * * *

(ii) *Patent Trial and Appeal Board.* See § 41.10 or § 42.6 of this title. Notices of appeal, appeal briefs, reply briefs, requests for oral hearing, as well as all other correspondence in an application or a patent involved in an appeal to the Board for which an address is not otherwise specified, should be addressed as set out in paragraph (a)(1)(i) of this section.

* * * * *

■ 3. Section 1.4 is amended by revising paragraph (a)(2) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

(a) * * *

(2) *Correspondence in and relating to a particular application or other proceeding in the Office.* See particularly the rules relating to the filing, processing, or other proceedings of national applications in subpart B, §§ 1.31 to 1.378; of international applications in subpart C, §§ 1.401 to 1.499; of *ex parte* reexaminations of patents in subpart D, §§ 1.501 to 1.570; of extension of patent term in subpart F, §§ 1.710 to 1.785; of *inter partes* reexaminations of patents in subpart H, §§ 1.902 to 1.997; and of the Patent Trial and Appeal Board in parts 41 and 42 of this title.

* * * * *

■ 4. Section 1.5 is amended by adding new paragraph (c) to read as follows:

§ 1.5 Identification of patent, patent application, or patent-related proceeding.

* * * * *

(c) Correspondence relating to a trial proceeding before the Patent Trial and Appeal Board (part 42 of this title) are governed by § 42.6 of this title.

* * * * *

■ 5. Section 1.6 is amended by revising the introductory text of paragraph (d) and paragraph (d)(9) to read as follows:

§ 1.6 Receipt of correspondence.

* * * * *

(d) *Facsimile transmission.* Except in the cases enumerated below, correspondence, including authorizations to charge a deposit account, may be transmitted by facsimile. The receipt date accorded to the correspondence will be the date on which the complete transmission is received in the United States Patent and Trademark Office, unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. See paragraph (a)(3) of this section. To facilitate proper processing, each transmission session should be limited to correspondence to be filed in a single application or other proceeding before the United States Patent and Trademark Office. The application number of a patent application, the control number of a reexamination proceeding, the interference number of an interference proceeding, the trial number of a trial proceeding before the Board, or the patent number of a patent should be entered as a part of the sender's identification on a facsimile cover sheet. Facsimile transmissions are not permitted and, if submitted, will not be accorded a date of receipt in the following situations:

* * * * *

(9) In contested cases and trials before the Patent Trial and Appeal Board, except as the Board may expressly authorize.

* * * * *

■ 6. Section 1.9 is amended by revising paragraph (g) to read as follows:

§ 1.9 Definitions.

* * * * *

(g) For definitions in Patent Trial and Appeal Board proceedings, see parts 41 and 42 of this title.

* * * * *

■ 7. Section 1.11 is amended by revising paragraph (e) to read as follows:

§ 1.11 Files open to the public.

* * * * *

(e) Except as prohibited in § 41.6(b), § 42.14 or § 42.410(b), the file of any interference or trial before the Patent Trial and Appeal Board is open to public inspection and copies of the file may be obtained upon payment of the fee therefor.

■ 8. Section 1.17 is amended by revising paragraph (b) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(b) For fees in proceedings before the Patent Trial and Appeal Board, see § 41.20 and § 42.15 of this title.

* * * * *

■ 9. Section 1.36 is amended by revising paragraph (b) to read as follows:

§ 1.36 Revocation of power of attorney; withdrawal of patent attorney or agent.

* * * * *

(b) A registered patent attorney or patent agent who has been given a power of attorney pursuant to § 1.32(b) may withdraw as attorney or agent of record upon application to and approval by the Director. The applicant or patent owner will be notified of the withdrawal of the registered patent attorney or patent agent. Where power of attorney is given to the patent practitioners associated with a Customer Number, a request to delete all of the patent practitioners associated with the Customer Number may not be granted if an applicant has given power of attorney to the patent practitioners associated with the Customer Number in an application that has an Office action to which a reply is due, but insufficient time remains for the applicant to file a reply. See § 41.5 of this title for withdrawal during proceedings before the Patent Trial and Appeal Board.

■ 10. Section 1.51 is amended by revising paragraph (c)(2) to read as follows:

§ 1.51 General requisites of an application.

* * * * *

(c) * * *

(2) A specification as prescribed by 35 U.S.C. 112(a), see § 1.71;

* * * * *

■ 11. Section 1.57 is amended by revising paragraphs (c)(1), (c)(2), and (c)(3) to read as follows:

§ 1.57 Incorporation by reference.

* * * * *

(c) * * *

(1) Provide a written description of the claimed invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and set forth the best mode contemplated by the inventor of carrying out the invention as required by 35 U.S.C. 112(a);

(2) Describe the claimed invention in terms that particularly point out and distinctly claim the invention as required by 35 U.S.C. 112(b); or

(3) Describe the structure, material, or acts that correspond to a claimed means or step for performing a specified function as required by 35 U.S.C. 112(f).

* * * * *

■ 12. Section 1.59 is amended by revising paragraph (a)(1) to read as follows:

§ 1.59 Expungement of information or copy of papers in application file.

(a)(1) Information in an application will not be expunged, except as provided in paragraph (b) of this section or § 41.7(a) or § 42.7(a) of this title.

* * * * *

■ 13. Section 1.78 is amended by revising the introductory text of paragraph (a)(1) and paragraph (a)(4) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a)(1) A nonprovisional application or international application designating the United States of America may claim an invention disclosed in one or more prior-filed copending nonprovisional applications or international applications designating the United States of America. In order for an application to claim the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America, each prior-filed application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by 35 U.S.C. 112(a), other than the requirement to disclose the best mode. In addition, each prior-filed application must be:

* * * * *

(4) A nonprovisional application, other than for a design patent, or an international application designating the United States of America may claim an invention disclosed in one or more prior-filed provisional applications. In order for an application to claim the benefit of one or more prior-filed provisional applications, each prior-filed provisional application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by 35 U.S.C. 112(a), other than the requirement to disclose the best mode. In addition, each prior-filed provisional application must be entitled to a filing date as set forth in § 1.53(c), and the basic filing fee set forth in § 1.16(d) must be paid within the time period set forth in § 1.53(g).

* * * * *

■ 14. Section 1.136 is amended by revising paragraphs (a)(1)(iv), (a)(1)(v), (a)(2), and (b) to read as follows:

§ 1.136 Extensions of time.

(a)(1) * * *

(iv) The reply is to a decision by the Patent Trial and Appeal Board pursuant to § 1.304 or to § 41.50 or § 41.52 of this title; or

(v) The application is involved in a contested case (§ 41.101(a) of this title) or a derivation proceeding (§ 42.4(b) of this title).

(2) The date on which the petition and the fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. A reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application (§ 1.135), but in no situation may an applicant reply later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings, § 1.956 for extensions of time in *inter partes* reexamination proceedings; §§ 41.4(a) and 41.121(a)(3) of this title for extensions of time in contested cases before the Patent Trial and Appeal Board; and § 42.5(c) of this title for extensions of time in trials before the Patent Trial and Appeal Board.

* * * * *

(b) When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not effect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings; § 1.956 for extensions of time in *inter partes* reexamination proceedings; §§ 41.4(a) and 41.121(a)(3) of this title for extensions of time in contested cases before the Patent Trial and Appeal Board; and § 42.5(c) of this title for extensions of time in trials before the Patent Trial and Appeal Board. Any request under this section must be accompanied by the petition fee set forth in § 1.17(g).

* * * * *

■ 15. Section 1.178 is amended by revising paragraph (b) to read as follows:

§ 1.178 Original patent; continuing duty of applicant.

* * * * *

(b) In any reissue application before the Office, the applicant must call to the attention of the Office any prior or concurrent proceedings in which the patent (for which reissue is requested) is or was involved, such as interferences or trials before the Patent Trial and Appeal Board, reissues, reexaminations, or litigations and the results of such proceedings (see also § 1.173(a)(1)).

■ 16. Section 1.181 is amended by revising paragraphs (a)(1) and (a)(3) to read as follows:

§ 1.181 Petition to the Director.

(a) * * *

(1) From any action or requirement of any examiner in the *ex parte* prosecution of an application, or in *ex parte* or *inter partes* prosecution of a reexamination proceeding which is not subject to appeal to the Patent Trial and Appeal Board or to the court;

* * * * *

(3) To invoke the supervisory authority of the Director in appropriate circumstances. For petitions involving action of the Patent Trial and Appeal Board, see § 41.3 of this title.

* * * * *

■ 17. The undesignated center heading before § 1.191 is revised to read as follows:

Appeal to the Patent Trial and Appeal Board

■ 18. Section 1.191 is revised to read as follows:

§ 1.191 Appeal to Patent Trial and Appeal Board.

Appeals to the Patent Trial and Appeal Board under 35 U.S.C. 134(a) and (b) are conducted according to part 41 of this title.

■ 19. Section 1.198 is revised to read as follows:

§ 1.198 Reopening after a final decision of the Patent Trial and Appeal Board.

When a decision by the Patent Trial and Appeal Board on appeal has become final for judicial review, prosecution of the proceeding before the primary examiner will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.114 or § 41.50 of this title without the written authority of the Director,

and then only for the consideration of matters not already adjudicated, sufficient cause being shown.

■ 20. Section 1.248 is amended by revising the section heading and paragraph (c) to read as follows:

§ 1.248 Service of papers; manner of service; proof of service in cases other than interferences and trials.

* * * * *

(c) See § 41.106(e) or § 42.6(e) of this title for service of papers in contested cases or trials before the Patent Trial and Appeal Board.

■ 21. Section 1.313 is amended by revising paragraph (b)(4) to read as follows:

§ 1.313 Withdrawal from issue.

* * * * *

(b) * * *

(4) For an interference or derivation proceeding.

* * * * *

■ 22. Section 1.322 is amended by revising paragraph (a)(3) to read as follows:

§ 1.322 Certificate of correction of Office mistake.

(a) * * *

(3) If the request relates to a patent involved in an interference or trial before the Patent Trial and Appeal Board, the request must comply with the requirements of this section and be accompanied by a motion under § 41.121(a)(2), § 41.121(a)(3), or § 42.20 of this title.

* * * * *

■ 23. Section 1.323 is revised to read as follows:

§ 1.323 Certificate of correction of applicant's mistake.

The Office may issue a certificate of correction under the conditions specified in 35 U.S.C. 255 at the request of the patentee or the patentee's assignee, upon payment of the fee set forth in § 1.20(a). If the request relates to a patent involved in an interference or trial before the Patent Trial and Appeal Board, the request must comply with the requirements of this section and be accompanied by a motion under § 41.121(a)(2), § 41.121(a)(3) or § 42.20 of this title.

■ 24. The undesignated center heading before § 1.501 is revised to read as follows:

Citation of Prior Art and Written Statements

■ 25. Section 1.501 is revised to read as follows:

§ 1.501 Citation of prior art and written statements in patent files.

(a) *Information content of submission:* At any time during the period of enforceability of a patent, any person may file a written submission with the Office under this section, which is directed to the following information:

(1) Prior art consisting of patents or printed publications which the person making the submission believes to have a bearing on the patentability of any claim of the patent; or

(2) Statements of the patent owner filed by the patent owner in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of the patent. Any statement submitted under this paragraph must be accompanied by any other documents, pleadings, or evidence from the proceeding in which the statement was filed that address the written statement, and such statement and accompanying information under this paragraph must be submitted in redacted form to exclude information subject to an applicable protective order.

(3) Submissions under paragraph (a)(2) of this section must identify:

(i) The forum and proceeding in which patent owner filed each statement;

(ii) The specific papers and portions of the papers submitted that contain the statements; and

(iii) How each statement submitted is a statement in which patent owner took a position on the scope of any claim in the patent.

(b) *Explanation:* A submission pursuant to paragraph (a) of this section:

(1) Must include an explanation in writing of the pertinence and manner of applying any prior art submitted under paragraph (a)(1) of this section and any written statement and accompanying information submitted under paragraph (a)(2) of this section to at least one claim of the patent, in order for the submission to become a part of the official file of the patent; and

(2) May, if the submission is made by the patent owner, include an explanation of how the claims differ from any prior art submitted under paragraph (a)(1) of this section or any written statements and accompanying information submitted under paragraph (a)(2) of this section.

(c) *Reexamination pending:* If a reexamination proceeding has been requested and is pending for the patent in which the submission is filed, entry of the submission into the official file of the patent is subject to the provisions of §§ 1.502 and 1.902.

(d) *Identity:* If the person making the submission wishes his or her identity to be excluded from the patent file and kept confidential, the submission papers must be submitted anonymously without any identification of the person making the submission.

(e) *Certificate of Service:* A submission under this section by a person other than the patent owner must include a certification that a copy of the submission was served in its entirety upon patent owner at the address as provided for in § 1.33 (c). A submission by a person other than the patent owner that fails to include proper proof of service as required by § 1.248(b) will not be entered into the patent file.

■ 26. Section 1.510 is amended by revising paragraphs (a) and (b)(2) and adding new paragraph (b)(6) to read as follows:

§ 1.510 Request for ex parte reexamination.

(a) Any person may, at any time during the period of enforceability of a patent, file a request for an *ex parte* reexamination by the Office of any claim of the patent on the basis of prior art patents or printed publications cited under § 1.501, unless prohibited by 35 U.S.C. 315(e)(1) or 35 U.S.C. 325(e)(1). The request must be accompanied by the fee for requesting reexamination set in § 1.20(c)(1).

(b) * * *

(2) An identification of every claim for which reexamination is requested, and a detailed explanation of the pertinency and manner of applying the cited prior art to every claim for which reexamination is requested. For each statement of the patent owner and accompanying information submitted pursuant to § 1.501(a)(2) which is relied upon in the detailed explanation, the request must explain how that statement is being used to determine the proper meaning of a patent claim in connection with the prior art applied to that claim and how each relevant claim is being interpreted. If appropriate, the party requesting reexamination may also point out how claims distinguish over cited prior art.

* * * * *

(6) A certification by the third party requester that the statutory estoppel provisions of 35 U.S.C. 315(e)(1) or 35 U.S.C. 325(e)(1) do not prohibit the requester from filing the *ex parte* reexamination request.

* * * * *

■ 27. Section 1.515 is amended by revising paragraph (a) to read as follows:

§ 1.515 Determination of the request for ex parte reexamination.

(a) Within three months following the filing date of a request for an *ex parte* reexamination, an examiner will consider the request and determine whether or not a substantial new question of patentability affecting any claim of the patent is raised by the request and the prior art cited therein, with or without consideration of other patents or printed publications. A statement and any accompanying information submitted pursuant to § 1.501(a)(2) will not be considered by the examiner when making a determination on the request. The examiner's determination will be based on the claims in effect at the time of the determination, will become a part of the official file of the patent, and will be given or mailed to the patent owner at the address provided for in § 1.33(c) and to the person requesting reexamination.

* * * * *

■ 28. Section 1.552 is amended by adding new paragraph (d) to read as follows:

§ 1.552 Scope of reexamination in ex parte reexamination proceedings.

* * * * *

(d) Any statement of the patent owner and any accompanying information submitted pursuant to § 1.501(a)(2) which is of record in the patent being reexamined (which includes any reexamination files for the patent) may be used after a reexamination proceeding has been ordered to determine the proper meaning of a patent claim when applying patents or printed publications.

■ 29. Section 1.701 is amended by revising paragraphs (a)(1), (a)(3), (c)(1)(i), (c)(1)(ii), (c)(2)(iii), and (c)(3) to read as follows:

§ 1.701 Extension of patent term due to examination delay under the Uruguay Round Agreements Act (original applications, other than designs, filed on or after June 8, 1995, and before May 29, 2000).

(a) * * *

(1) Interference or derivation proceedings under 35 U.S.C. 135(a); and/or

* * * * *

(3) Appellate review by the Patent Trial and Appeal Board or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability and if the patent is not subject to a terminal disclaimer due to the issuance of another patent claiming subject matter that is not patentably distinct from that under appellate review. If an application is remanded by a panel of the Patent Trial and Appeal Board and the remand is the last action by a panel of the Patent Trial and Appeal Board prior to the mailing of a notice of allowance under 35 U.S.C. 151 in the application, the remand shall be considered a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(2) as amended by section 532(a) of the Uruguay Round Agreements Act, Public Law 103–465, 108 Stat. 4809, 4983–85 (1994), and a final decision in favor of the applicant under paragraph (c)(3) of this section. A remand by a panel of the Patent Trial and Appeal Board shall not be considered a decision in the review reversing an adverse determination of patentability as provided in this paragraph if there is filed a request for continued examination under 35 U.S.C. 132(b) that was not first preceded by the mailing, after such remand, of at least one of an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151.

(c)(1) * * *

(i) With respect to each interference or derivation proceeding in which the application was involved, the number of days, if any, in the period beginning on the date the interference or derivation proceeding was instituted to involve the application in the interference or derivation proceeding and ending on the date that the interference or derivation proceeding was terminated with respect to the application; and

(ii) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Patent and Trademark Office due to interference or derivation proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension.

(2) * * *

(iii) The number of days, if any, in the period beginning on the date applicant was notified that an interference or derivation proceeding would be instituted but for the secrecy order and ending on the date the secrecy order and any renewal thereof was removed; and

* * * * *

(3) The period of delay under paragraph (a)(3) of this section is the sum of the number of days, if any, in the period beginning on the date on which an appeal to the Patent Trial and Appeal Board was filed under 35 U.S.C. 134 and ending on the date of a final decision in favor of the applicant by the Patent Trial and Appeal Board or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145.

* * * * *

■ 30. Section 1.702 is amended by revising paragraphs (a)(3), (b)(2), (b)(4), (c), and (e) to read as follows:

§ 1.702 Grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

(a) * * *

(3) Act on an application not later than four months after the date of a decision by the Patent Trial and Appeal Board under 35 U.S.C. 134 or 135 or a decision by a Federal court under 35 U.S.C. 141, 145, or 146 where at least one allowable claim remains in the application; or

* * * * *

(b) * * *

(2) Any time consumed by an interference or derivation proceeding under 35 U.S.C. 135(a);

* * * * *

(4) Any time consumed by review by the Patent Trial and Appeal Board or a Federal court; or

* * * * *

(c) *Delays caused by interference and derivation proceedings.* Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to interference or derivation proceedings under 35 U.S.C. 135(a).

* * * * *

(e) *Delays caused by successful appellate review.* Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to review by the Patent Trial and Appeal Board under 35 U.S.C. 134 or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued under a decision in the review reversing an adverse determination of patentability. If an application is remanded by a panel of the Patent Trial and Appeal Board and the remand is the last action by a panel of the Patent Trial and Appeal Board prior to the mailing of a notice of allowance under 35 U.S.C. 151 in the application, the remand shall be considered a decision by the Patent Trial and Appeal Board as that phrase is used in 35 U.S.C. 154(b)(1)(A)(iii), a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(1)(C)(iii), and a final decision in favor of the applicant under § 1.703(e). A remand by a panel of the Patent Trial and Appeal Board shall not be

considered a decision in the review reversing an adverse determination of patentability as provided in this paragraph if there is filed a request for continued examination under 35 U.S.C. 132(b) that was not first preceded by the mailing, after such remand, of at least one of an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151.

* * * * *

■ 31. Section 1.703 is amended by revising paragraphs (a)(5), (b)(2), (b)(3)(iii), (c)(1), (c)(2) and (d)(3) to read as follows:

§ 1.703 Period of adjustment of patent term due to examination delay.

(a) * * *

(5) The number of days, if any, in the period beginning on the day after the date that is four months after the date of a final decision by the Patent Trial and Appeal Board or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145 or 146 where at least one allowable claim remains in the application and ending on the date of mailing of either an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151, whichever occurs first; and

* * * * *

(b) * * *

(2)(i) The number of days, if any, in the period beginning on the date an interference or derivation proceeding was instituted to involve the application in the interference or derivation proceeding under 35 U.S.C. 135(a) and ending on the date that the interference or derivation proceeding was terminated with respect to the application; and

(ii) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Office due to interference or derivation proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension;

(3) * * *

(iii) The number of days, if any, in the period beginning on the date applicant was notified that an interference or derivation proceeding under 35 U.S.C. 135(a) would be instituted but for the secrecy order and ending on the date the secrecy order was removed; and

* * * * *

(c) * * *

(1) The number of days, if any, in the period beginning on the date an interference or derivation proceeding was instituted to involve the application in the interference or derivation proceeding under 35 U.S.C. 135(a) and ending on the date that the interference or derivation proceeding was terminated with respect to the application; and

(2) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Office due to interference or derivation proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension.

(d) * * *

(3) The number of days, if any, in the period beginning on the date applicant was notified that an interference or derivation proceeding under 35 U.S.C. 135(a) would be instituted but for the secrecy order and ending on the date the secrecy order was removed; and

* * * * *

■ 32. Section 1.704 is amended by revising the introductory text of paragraph (c)(9) to read as follows:

§ 1.704 Reduction of period of adjustment of patent term.

* * * * *

(c) * * *

(9) Submission of an amendment or other paper after a decision by the Patent Trial and Appeal Board, other than a decision designated as containing a new ground of rejection under § 41.50 (b) of this title or statement under § 41.50(c) of this title, or a decision by a Federal court, less than one month before the mailing of an Office action under 35 U.S.C. 132 or notice of allowance under 35 U.S.C. 151 that requires the mailing of a supplemental Office action or supplemental notice of allowance, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

* * * * *

■ 33. Section 1.937 is amended by revising paragraph (a) to read as follows:

§ 1.937 Conduct of inter partes reexamination.

(a) All *inter partes* reexamination proceedings, including any appeals to the Patent Trial and Appeal Board, will be conducted with special dispatch within the Office, unless the Director makes a determination that there is good cause for suspending the reexamination proceeding.

* * * * *

■ 34. The undesignated center heading before § 1.959 is revised to read as follows:

Appeal to the Patent Trial and Appeal Board in Inter Partes Reexamination

■ 35. Section 1.959 is revised to read as follows:

§ 1.959 Appeal in inter partes reexamination.

Appeals to the Patent Trial and Appeal Board under 35 U.S.C. 134(c) are conducted according to part 41 of this title.

■ 36. Section 1.979 is revised to read as follows:

§ 1.979 Return of Jurisdiction from the Patent Trial and Appeal Board; termination of appeal proceedings.

(a) Jurisdiction over an *inter partes* reexamination proceeding passes to the examiner after a decision by the Patent Trial and Appeal Board upon transmittal of the file to the examiner, subject to each appellant's right of appeal or other review, for such further action as the condition of the *inter partes* reexamination proceeding may require, to carry into effect the decision of the Patent Trial and Appeal Board.

(b) Upon judgment in the appeal before the Patent Trial and Appeal Board, if no further appeal has been taken (§ 1.983), the prosecution in the *inter partes* reexamination proceeding will be terminated and the Director will issue and publish a certificate under § 1.997 concluding the proceeding. If an appeal to the U.S. Court of Appeals for the Federal Circuit has been filed, that appeal is considered terminated when the mandate is issued by the Court.

■ 37. Section 1.981 is revised to read as follows:

§ 1.981 Reopening after a final decision of the Patent Trial and Appeal Board.

When a decision by the Patent Trial and Appeal Board on appeal has become final for judicial review, prosecution of the *inter partes* reexamination proceeding will not be reopened or reconsidered by the primary examiner except under the provisions of § 41.77 of this title without the written authority of the Director, and then only for the consideration of matters not already adjudicated, sufficient cause being shown.

■ 38. Section 1.983 is amended by revising paragraphs (a), (c), (d), and (f) to read as follows:

§ 1.983 Appeal to the United States Court of Appeals for the Federal Circuit in inter partes reexamination.

(a) The patent owner or third party requester in an *inter partes* reexamination proceeding who is a party to an appeal to the Patent Trial and Appeal Board and who is dissatisfied with the decision of the Patent Trial and Appeal Board may, subject to § 41.81, appeal to the U.S. Court of Appeals for the Federal Circuit and may be a party to any appeal thereto

taken from a reexamination decision of the Patent Trial and Appeal Board.

* * * * *

(c) If the patent owner has filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit, the third party requester may cross appeal to the U.S. Court of Appeals for the Federal Circuit if also dissatisfied with the decision of the Patent Trial and Appeal Board.

(d) If the third party requester has filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit, the patent owner may cross appeal to the U.S. Court of Appeals for the Federal Circuit if also dissatisfied with the decision of the Patent Trial and Appeal Board.

* * * * *

(f) Notwithstanding any provision of the rules, in any reexamination proceeding commenced prior to November 2, 2002, the third party requester is precluded from appealing and cross appealing any decision of the Patent Trial and Appeal Board to the U.S. Court of Appeals for the Federal Circuit, and the third party requester is precluded from participating in any appeal taken by the patent owner to the U.S. Court of Appeals for the Federal Circuit.

■ 39. Section 1.985 is revised to read as follows:

§ 1.985 Notification of prior or concurrent proceedings in inter partes reexamination.

(a) In any *inter partes* reexamination proceeding, the patent owner shall call the attention of the Office to any prior or concurrent proceedings in which the patent is or was involved, including but not limited to interference or trial before the Patent Trial and Appeal Board, reissue, reexamination, or litigation and the results of such proceedings.

(b) Notwithstanding any provision of the rules, any person at any time may file a paper in an *inter partes* reexamination proceeding notifying the Office of a prior or concurrent proceeding in which the same patent is or was involved, including but not limited to interference or trial before the Patent Trial and Appeal Board, reissue, reexamination, or litigation and the results of such proceedings. Such paper must be limited to merely providing notice of the other proceeding without discussion of issues of the current *inter partes* reexamination proceeding.

■ 40. Section 1.993 is revised to read as follows:

§ 1.993 Suspension of concurrent interference and inter partes reexamination proceeding.

If a patent in the process of *inter partes* reexamination is or becomes involved in an interference or trial before the Patent Trial and Appeal Board, the Director may suspend the *inter partes* reexamination, interference, or trial. The Director will not consider a request to suspend an interference or trial unless a motion under § 41.121(a)(3) of this title to suspend the interference or trial has been presented to, and denied by, an administrative patent judge and the request is filed within ten (10) days of a decision by an administrative patent judge denying the motion for suspension or such other time as the administrative patent judge may set.

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

■ 41. The authority citation for 37 CFR part 5 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 41, 181–188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Public Law 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.;* the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.;* the Nuclear Non Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.;* and the delegations in the regulations under these Acts to the Director (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

■ 42. Section 5.3 is amended by revising paragraph (b) to read as follows:

§ 5.3 Prosecution of application under secrecy orders; withholding patent.

* * * * *

(b) An interference or derivation will not be instituted involving a national application under secrecy order. An applicant whose application is under secrecy order may suggest an interference (§ 41.202(a) of this title), but the Office will not act on the request while the application remains under a secrecy order.

* * * * *

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

■ 43. The authority citation for 37 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 500, 15 U.S.C. 1123; 35 U.S.C. 2(b)(2), 31, 32, 41.

■ 44. Section 10.1 is amended by revising paragraph (s) to read as follows:

§ 10.1 Definitions.

* * * * *

(s) A *proceeding before the Office* includes an application, a reexamination, a protest, a public use proceeding, a patent interference, a trial before the Patent Trial and Appeal Board, an *inter partes* trademark proceeding, or any other proceeding which is pending before the Office.

* * * * *

PART 11—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

■ 45. The authority citation for 37 CFR part 11 continues to read as follows:

Authority: 5 U.S.C. 500, 15 U.S.C. 1123, 35 U.S.C. 2(b)(2), 32, 41.

■ 46. Section 11.5 is amended by revising the introductory text of paragraph (b)(1) to read as follows:

§ 11.5 Register of attorneys and agents in patent matters; practice before the office.

* * * * *

(b) * * *

(1) *Practice before the Office in patent matters.* Practice before the Office in patent matters includes, but is not limited to, preparing and prosecuting any patent application, consulting with or giving advice to a client in contemplation of filing a patent application or other document with the Office, drafting the specification or claims of a patent application; drafting an amendment or reply to a communication from the Office that may require written argument to establish the patentability of a claimed invention; drafting a reply to a communication from the Office regarding a patent application; and drafting a communication for a public use, interference, reexamination proceeding, petition, appeal to or any other proceeding before the Patent Trial and Appeal Board, or other proceeding. Registration to practice before the Office in patent cases sanctions the performance of those services which are reasonably necessary and incident to the preparation and prosecution of patent applications or other proceeding before the Office involving a patent application or patent in which the practitioner is authorized to participate. The services include:

* * * * *

■ 47. Section 11.6 is amended by revising paragraph (d) to read as follows:

§ 11.6 Registration of attorneys and agents.

* * * * *

(d) *Patent Trial and Appeal Board matters.* For action by a person who is

not registered in a proceeding before the Patent Trial and Appeal Board, see § 41.5(a) or § 42.10(c) of this title.

■ 48. Section 11.10 is amended by revising paragraph (b)(3)(iii) to read as follows:

§ 11.10 Restrictions on practice in patent matters.

* * * * *

(b) * * *

(3) * * *

(iii) Particular patent or patent application means any patent or patent application, including, but not limited to, a provisional, substitute, international, continuation, divisional, continuation-in-part, or reissue patent application, as well as any protest, reexamination, petition, appeal, interference, or trial proceeding based on the patent or patent application.

* * * * *

■ 49. Section 11.58 is amended by revising paragraph (b)(1)(i) to read as follows:

§ 11.58 Duties of disciplined or resigned practitioner, or practitioner on disability inactive status.

* * * * *

(b) * * *

(1) * * *

(i) File a notice of withdrawal as of the effective date of the exclusion, suspension, acceptance of resignation, or transfer to disability inactive status in each pending patent and trademark application, each pending reexamination and interference or trial proceeding, and every other matter pending in the Office, together with a copy of the notices sent pursuant to paragraphs (b) and (c) of this section;

* * * * *

PART 41—PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 50. The authority citation for 37 CFR part 41 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 132, 133, 134, 135, 306, and 315.

■ 51. The heading of part 41 is revised to read as set forth above.

■ 52. Section 41.1 is amended by revising paragraph (a) to read as follows:

§ 41.1 Policy.

(a) *Scope.* Part 41 governs appeals and interferences before the Patent Trial and Appeal Board. Sections 1.1 to 1.36 and 1.181 to 1.183 of this title also apply to practice before the Board, as do other sections of part 1 of this title that are incorporated by reference into part 41.

* * * * *

■ 53. Section 41.2 is amended by revising the introductory text of the definition of *Board* to read as follows:

§ 41.2 Definitions.

* * * * *

Board means the Patent Trial and Appeal Board and includes:

* * * * *

■ 54. Section 41.10 is revised to read as follows:

§ 41.10 Correspondence addresses.

Except as the Board may otherwise direct,

(a) *Appeals.* Correspondence in an application or a patent involved in an appeal (subparts B and C of this part) during the period beginning when an appeal docketing notice is issued and ending when a decision has been rendered by the Board, as well as any request for rehearing of a decision by the Board, shall be mailed to: Patent Trial and Appeal Board, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450. Notices of appeal, appeal briefs, reply briefs, requests for oral hearing, as well as all other correspondence in an application or a patent involved in an appeal to the Board for which an address is not otherwise specified, should be addressed as set out in § 1.1(a)(1)(i) of this title.

(b) *Interferences.* Mailed correspondence in interference (subpart D of this part) shall be sent to Mail Stop INTERFERENCE, Patent Trial and Appeal Board, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

(c) *Trial Proceedings.* Correspondence in trial proceedings (part 42 of this title) are governed by § 42.6(b) of this title.

■ 55. Section 41.30 is amended by revising the definition of *Proceeding* to read as follows:

§ 41.30 Definitions.

* * * * *

Proceeding means either a national application for a patent, an application for reissue of a patent, an *ex parte* reexamination proceeding, or a trial before the Patent Trial and Appeal Board. Appeal to the Board in an *inter partes* reexamination proceeding is controlled by subpart C of this part.

* * * * *

■ 56. Section 41.37 is amended by revising paragraphs (c)(1)(ii) and (c)(1)(iii) to read as follows:

§ 41.37 Appeal brief.

* * * * *

(c) * * *

(1) * * *

(ii) *Related appeals, interferences, and trials.* A statement identifying by application, patent, appeal, interference, or trial number all other prior and pending appeals, interferences, trials before the Board, or judicial proceedings (collectively, ''related cases'') which satisfy all of the following conditions: involve an application or patent owned by the appellant or assignee, are known to appellant, the appellant's legal representative, or assignee, and may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal, except that such statement is not required if there are no such related cases. If an appeal brief does not contain a statement of related cases, the Office may assume that there are no such related cases.

(iii) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the rejected independent claims, which shall refer to the specification in the Record by page and line number or by paragraph number, and to the drawing, if any, by reference characters. For each rejected independent claim, and for each dependent claim argued separately under the provisions of paragraph (c)(1)(iv) of this section, if the claim contains a means plus function or step plus function recitation as permitted by 35 U.S.C. 112(f), then the concise explanation must identify the structure, material, or acts described in the specification in the Record as corresponding to each claimed function with reference to the specification in the Record by page and line number or by paragraph number, and to the drawing, if any, by reference characters. Reference to the patent application publication does not satisfy the requirements of this paragraph.

* * * * *

■ 57. Section 41.67 is amended by revising paragraphs (c)(1)(ii) and (c)(1)(v) to read as follows:

§ 41.67 Appellant's brief.

* * * * *

(c)(1) * * *

(ii) *Related appeals, interferences, and trials.* A statement identifying by application, patent, appeal, interference, or trial number all other prior and pending appeals, interferences, trials before the Board, or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any

proceeding identified under this paragraph must be included in an appendix as required by paragraph (c)(1)(xi) of this section.

* * * * *

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by column and line number, and to the drawing(s), if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112(f), must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

* * * * *

■ 58. Section 41.68 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 41.68 Respondent's brief.

* * * * *

(b)(1) * * *

(ii) *Related Appeals, Interferences, and trials.* A statement identifying by application, patent, appeal, interference, or trial number all other prior and pending appeals, interferences or judicial proceedings known to respondent, the respondent's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by paragraph (b)(1)(ix) of this section.

* * * * *

■ 59. Section 41.77 is amended by revising paragraph (a) to read as follows:

§ 41.77 Decisions and other actions by the Board.

(a) The Patent Trial and Appeal Board, in its decision, may affirm or reverse each decision of the examiner on all issues raised on each appealed claim, or remand the reexamination proceeding to the examiner for further consideration. The reversal of the examiner's determination not to make a rejection proposed by the third party requester constitutes a decision adverse to the patentability of the claims which are subject to that proposed rejection which will be set forth in the decision of the Patent Trial and Appeal Board as a new ground of rejection under paragraph (b) of this section. The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed.

* * * * *

■ 60. Section 41.110 is amended by revising paragraph (b)(2) to read as follows:

§ 41.110 Filing claim information.

* * * * *

(b) * * *

(2) For each involved claim that contains a means-plus-function or step-plus-function limitation in the form permitted under 35 U.S.C. 112(f), file an annotated copy of the claim indicating in bold face between braces ({ }) the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function.

* * * * *

■ 61. Section 41.201 is amended by revising paragraph (2)(ii) of the definition of *Threshold issue* to read as follows:

§ 41.201 Definitions.

* * * * *

Threshold issue * * *

(2) * * *

(ii) Unpatentability for lack of written description under 35 U.S.C. 112(a) of an involved application claim where the applicant suggested, or could have suggested, an interference under § 41.202(a).

Dated: July 25, 2012.

David J. Kappos,

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

[FR Doc. 2012–18530 Filed 8–3–12; 8:45 am]

BILLING CODE 3510–16–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 12–130; RM–11662, DA 12–1208]

Television Broadcasting Services; Greenville, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by ION Media Greenville License, Inc. (''ION''), the licensee of WEPX–TV, channel 51, Greenville, North Carolina, requesting the substitution of channel 26 for channel 51 at Greenville. While the Commission instituted a freeze on the acceptance of full power television rulemaking petitions requesting channel substitutions in May 2011, it subsequently announced that it would lift the freeze to accept such petitions for rulemaking seeking to relocate from channel 51 pursuant to a voluntary relocation agreement with Lower 700 MHz A Block licensees. In addition, according to ION, this channel substitution serves the public interest as it will increase the station's service area by almost 100,000 persons.

DATES: This rule is effective August 6, 2012.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *joyce.bernstein@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 12–130, adopted July 27, 2012, and released July 30, 2012. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the company's Web site, *http://www.bcpiweb.com.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the