We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Amy Loyd,

Assistant Secretary for Career, Technical, and Adult Education.

[FR Doc. 2023–10220 Filed 5–15–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 11, and 41

[Docket No. PTO–C–2023–0010]

RIN 0651–AD67

Changes to the Representation of Others in Design Patent Matters Before the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Patent and Trademark Office (USPTO or Office) proposes to amend the rules of practice in patent cases and the rules regarding the representation of others before the USPTO to create a separate design patent practitioner bar whereby admitted design patent practitioners would practice in design patent proceedings only. Presently, there is only one patent bar that applies to those who practice in patent matters before the Office, including in utility, plant, and design patents. The potential creation of a design patent practitioner bar would not impact the ability of those already registered to practice in any patent matters, including design patent matters, before the USPTO to continue to practice in any patent matters before the Office. Furthermore, it would not impact the ability of applicants for registration who meet the current criteria, including qualifying for and passing the current registration exam, to practice in any patent matters before the Office, including design patent matters. Expanding the admission criteria of the patent bar would encourage broader participation and keep up with the ever-evolving technology and related teachings that qualify someone to practice before the USPTO.

DATES: Written comments must be received on or before August 14, 2023.

ADDRESSES: For reasons of government efficiency, comments must be submitted through the Federal eRulemaking Portal at *www.regulations.gov.* To submit comments via the portal, one should enter docket number PTO–C–2023–0010 on the homepage and click ''search.'' The site will provide search results listing all documents associated with this docket. Commenters can find a reference to this proposed rule and click on the ''Comment'' icon, complete the required fields, and enter or attach their comments. Attachments to electronic comments will be accepted in Adobe® portable document format (PDF) or Microsoft Word® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic submission of or access to comments is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Will Covey, Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline (OED), at 571–272–4097; Erin Harriman, Senior Legal Advisor, Office of Patent Legal Administration, at 571–272–7701; and Scott C. Moore, Acting Vice Chief Administrative Patent Judge, Patent Trial and Appeal Board, at 571–272–9797.

SUPPLEMENTARY INFORMATION: The Director of the USPTO has statutory authority to require a showing by patent practitioners that they possess ''the necessary qualifications to render applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.'' 35 U.S.C. 2(b)(2)(D). Courts have determined that the USPTO Director bears the primary responsibility for protecting the public from unqualified practitioners. *See Hsuan-Yeh Chang* v. *Kappos,* 890 F. Supp. 2d 110, 116–17 (D.D.C. 2012) (''Title 35 vests the [Director of the USPTO], not the courts, with the responsibility to protect [US]PTO proceedings from unqualified practitioners.'') (quoting *Premysler* v. *Lehman,* 71 F.3d 387, 389 (Fed. Cir. 1995)), aff'd sub nom., *Hsuan-Yeh Chang* v. *Rea,* 530 F. App'x 958 (Fed. Cir. 2013).

Pursuant to that authority and responsibility, the USPTO has promulgated regulations, administered by OED, that provide that registration to practice in patent matters before the

USPTO requires a practitioner to demonstrate possession of ''the legal, scientific, and technical qualifications necessary for him or her to render applicants valuable service.'' 37 CFR 11.7(a)(2)(ii). The Office determines whether an applicant possesses the legal qualification by administering a registration examination, which applicants for registration must pass before being admitted to practice. *See* 37 CFR 11.7(b)(ii). To take the registration exam, applicants must first demonstrate they possess specific scientific and technical qualifications. The USPTO sets forth guidance for establishing possession of these scientific and technical qualifications in the General Requirements Bulletin for Admission to the Examination for Registration to Practice in Patent Cases Before the United States Patent and Trademark Office (GRB), available at *www.uspto.gov/sites/default/files/documents/OED_GRB.pdf.* The GRB also contains the ''Application for Registration to Practice before the United States Patent and Trademark Office.''

The criteria for practicing before the Office are and continue to be based in part on a determination of the types of scientific and technical qualifications and legal knowledge that are essential for practitioners to possess. This helps ensure that only competent practitioners who understand the applicable rules and regulations and have the background necessary to describe inventions in a full and clear manner are permitted to practice.

Currently, there is only one patent bar that applies to those who practice in patent matters before the Office, including in utility, plant, and design patents. The same scientific and technical requirements for admission to practice apply regardless of the type of patent application (that is, whether the application is a utility patent application, a plant patent application, or a design patent application). On October 18, 2022, the USPTO published a request for comments in which it requested comments on the potential creation of a design patent practitioner bar. *See* Expanding Admission Criteria for Registration To Practice in Patent Cases Before the United States Patent and Trademark Office (87 FR 63044). On January 19, 2023, the USPTO extended the response period. *See* Expanding Admission Criteria for Registration To Practice in Patent Cases Before the United States Patent and Trademark Office (88 FR 3394). On January 31, 2023, the comment period closed. The Office received a number of comments both in support of and opposed to the creation of a separate design patent practitioner bar.

The request for comments asked: (1) whether a separate design patent practitioner bar should be created; and (2) if so, how applicants would be admitted to the bar, and what standards would apply to enable one to become a design patent practitioner. The Office received 21 comments in response to the request. Thirteen of those comments were in favor of creating a design patent practitioner bar, while eight of those comments were opposed. A number of comments in favor of the proposal noted that a design patent practitioner bar would: (1) align the criteria for design patent practitioners with those of design patent examiners at the USPTO; (2) improve design patent practitioner quality and representation; (3) allow more under-represented groups to practice design patent law and aid more under-represented inventors in acquiring patents; (4) enable individuals with valuable knowledge of design to aid design patent prosecution; (5) lower the costs of obtaining design patents by promoting competition among practitioners; (6) ensure consistent, high-quality patents via qualified practitioners; (7) enlarge the pool of available service providers, including those practitioners whose background may be more tailored to the needs of a patent applicant; and (8) increase economic opportunities for design practitioners by allowing them to access a new market for the provision of their professional services.

The request posited three different options for implementing a design patent practitioner bar. These included requiring design patent practitioner bar applicants to: (1) take the current registration examination, but with modified scientific and technical requirements; (2) be a U.S. attorney (*i.e.,* an active member in good standing of the bar of the highest court of any State); or (3) take a separate design bar examination instead of the current registration examination.

The majority of those who were in favor of creating and implementing a design patent practitioner bar preferred the first option, namely, that design patent practitioner bar applicants would be required to take the current registration examination, but the scientific and technical requirements would be modified. Those who were in favor of this option noted that if the modified scientific and technical requirements included design degrees, the patent quality of design patents would increase because individuals with design degrees would be better able to prepare and prosecute design patent applications. Additionally, commenters noted that this option could increase the pool of potential applicants, which could lead to beneficial procompetitive effects. Lastly, this option would mirror the hiring practices of the USPTO for design patent examiners in that the same degrees would enable the practice of design patent examination in the Office and in prosecution before the Office.

Therefore, based on the support of stakeholders and commenters, this proposed rulemaking would implement the first option. Under this option, the applicant should have a bachelor's, master's, or doctorate of philosophy degree in any of the following areas from an accredited college or university: industrial design, product design, architecture, applied arts, graphic design, fine/studio arts, or art teacher education, or a degree equivalent to one of the listed degrees. Accepting degrees equivalent to those design degrees listed above is in line with the current practice of accepting degrees that are equivalent to those listed in the GRB under Category A. These degrees are currently acceptable for those applying for design examiner positions with the Office. To ensure applicants to the design patent practitioner bar have the requisite knowledge of USPTO rules and regulations, the USPTO would also require them to take and pass the current registration examination. Applicants would also be required to undergo and pass a moral character evaluation. The evaluation would be the same evaluation that is currently conducted for patent bar applicants, and is described in the GRB.

As mentioned above, admitted design patent practitioners may practice in design patent matters only. Patent practitioners admitted in the past, present, and future who have fulfilled the scientific and technical requirements as enumerated in the GRB in Categories A through C will be authorized to practice in all patent matters, including in utility, plant, and design patents.

Discussion of Proposed Rule Changes

The USPTO proposes to amend § 1.4(d)(1) to add the requirement that a design patent practitioner indicate their design patent practitioner status by placing the word ''design'' adjacent to their handwritten signature.

The USPTO proposes to amend § 1.4(d)(2)(ii) to add the requirement that a design patent practitioner indicate their design patent practitioner status by placing the word ''design'' adjacent to the last forward slash of their S-signature.

The USPTO proposes to amend § 1.32 to update the definition of ''practitioner'' in light of the proposed amendments to § 11.6(d).

A power of attorney naming the practitioners associated with a customer number filed in an application may only include practitioners who are authorized to practice in that application. For example, a purported power of attorney naming a customer number listing a non-inventor design patent practitioner may not be appropriately filed in a utility or plant patent application, as that design patent practitioner is not authorized to practice in that application.

The USPTO proposes to amend § 11.1 to add a definition for ''design patent practitioner.''

The USPTO proposes to amend § 11.1 to amend paragraph (1) under the definition of ''practitioner'' to refer to § 11.6.

The USPTO proposes to amend § 11.1 to amend the definition of ''register or roster'' to include design patent practitioners.

The USPTO proposes to amend § 11.5 to amend paragraph (b)(1) to remove ''public use'' proceedings, which are no longer held, and insert ''derivation'' proceedings; re-designate paragraph (b)(2) as paragraph (b)(3); and insert a new paragraph (b)(2), which would define practice before the Office in design patent matters.

The USPTO proposes to amend § 11.6 to re-designate paragraph (d) as paragraph (e), and insert a new paragraph (d) to clarify the parameters under which attorneys and agents may be registered as design patent practitioners.

The USPTO proposes to amend § 11.8(b) to require design patent practitioners to submit an oath or declaration under the same parameters as other registered practitioners.

The USPTO proposes to amend § 11.10(b) to restrict former employees of the USPTO from serving as design patent practitioners, commensurate with the restrictions placed on other registered practitioners.

The USPTO proposes to amend § 11.16(c) to clarify that only a practitioner registered under § 11.6(a) or (b) may serve as a Patent Faculty Clinic Supervisor in the USPTO Law School Clinic Certification Program.

The USPTO proposes to amend § 11.704 to state that a registered practitioner under § 11.6(a) who is an attorney may use the designation ''Patents,'' ''Patent Attorney,'' ''Patent Lawyer,'' ''Registered Patent Attorney,'' or a substantially similar designation; a registered practitioner under § 11.6(b) who is not an attorney may use the designation ''Patents,'' ''Patent Agent,'' ''Registered Patent Agent,'' or a substantially similar designation; a registered practitioner under § 11.6(d) who is an attorney may use the designation ''Design Patent Attorney''; and a registered practitioner under § 11.6(d) who is not an attorney (*i.e.,* who is an agent) may use the designation ''Design Patent Agent.''

The USPTO proposes to amend § 41.106 by replacing the term ''registered patent practitioner'' with ''registered practitioner.'' This amendment is intended solely to conform the terminology of this section to that used elsewhere in part 41, and is not intended to alter the substantive scope of § 41.106. For avoidance of doubt, the USPTO clarifies that if the amendments specified in this proposed rule are adopted, the term ''registered practitioner,'' as used in parts 41 and 42, and the term ''USPTO patent practitioner,'' as used in § 42.57, would encompass ''design patent practitioners,'' as defined in the proposed amendments to § 11.1.

Rulemaking Requirements

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

This proposed rule would amend the rules regarding the representation of others before the USPTO to create a separate design patent practitioner bar in which admitted design patent practitioners would practice in design patent proceedings only. Presently, there is only one patent bar that applies to those who practice in patent matters before the Office, including in the utility, plant, and design patent areas. The potential creation of a design patent practitioner bar would not impact the ability of those already registered to practice in any patent matters, including design patent matters, before the USPTO. Furthermore, it would not impact the ability of applicants who meet the current criteria, including qualifying for and passing the current registration exam, to practice in any patent matters before the Office.

The Regulatory Flexibility Act of 1980 (RFA) requires Federal agencies to consider the potential impact of regulations on small entities during the development of their rules. *See* 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996). The term ''small entities'' is comprised of small businesses, not-for-profit organizations that are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. An ''individual'' is not defined by the RFA as a small entity and costs to an individual from a rule are not considered for RFA purposes. In addition, the courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates small entities. Consequently, any indirect impacts from a rule to a small entity are not considered as costs for RFA purposes.

This rulemaking would create a separate design patent practitioner bar that would only impact individuals who apply for recognition to practice before the USPTO in design patent proceedings, and would not directly impact any small businesses. Additionally, the proposed changes do not add requirements or costs beyond those that currently exist for applicants or members to the USPTO practitioner bar. The proposed changes only expand the applicants that can represent certain matters before the USPTO. Applicants to the design patent practitioner bar would be expected to pay the same application and examination fee as applicants who want to practice in all patent matters, and be subject to existing requirements and procedures during the application process (for example, the same application and supporting documentation would be required of all applicants). Accordingly, the changes are expected to be of minimal or no additional burden to those practicing before the Office.

The Office acknowledges that the creation of a design patent practitioner bar would allow more practitioners to be recognized to practice before the USPTO, although they would be limited to design patent proceedings only. The Office considers these to be indirect impacts that are not considered to be costs for RFA purposes, but the Office welcomes any comments or data that may further inform the impact of this proposed rule.

For the reasons discussed above, this rulemaking will not have a significant economic impact on a substantial number of small entities.

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

C. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with E.O. 13563 (Jan. 18, 2011). 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 online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across Government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

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

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

F. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under E.O. 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 E.O. 13211 (May 18, 2001).

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

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

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

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

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

L. National Environmental Policy Act of 1969: 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.*

M. National Technology Transfer and Advancement Act of 1995: 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 that involve the use of technical standards.

N. Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This rulemaking involves information collection requirements that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The collections of information involved in this rulemaking have been reviewed and previously approved by OMB under OMB control numbers 0651–0012 (Admission to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the USPTO) and 0651–0017 (Practitioner Conduct and Discipline). These information collections will be updated, alongside any final rulemaking, to reflect any updated forms included within these information collections. Any increased respondent and burden numbers associated with the introduction of the design patent bar options will be included in that update.

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 has a currently valid OMB control number.

O. E-Government Act Compliance: The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

37 CFR Part 1

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

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, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the USPTO proposes to amend 37 CFR parts 1, 11, and 41 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. Amend § 1.4 by revising paragraphs (d)(1) and (d)(2)(ii) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(d)(1) *Handwritten signature.* A design patent practitioner must indicate their design patent practitioner status by placing the word ''design'' adjacent to their handwritten signature. Each piece of correspondence, except as provided in paragraphs (d)(2), (d)(3), (d)(4), (e), and (f) of this section, filed in an application, patent file, or other proceeding in the Office that requires a person's signature, must:

* * * * *

(2) * * *

(ii) A patent practitioner (§ 1.32(a)(1)), signing pursuant to §§ 1.33(b)(1) or 1.33(b)(2), must supply their registration number either as part of the S-signature or immediately below or adjacent to the S-signature. The hash (#) character may only be used as part of the S-signature when appearing before a practitioner's registration number; otherwise, the hash character may not be used in an S-signature. A design patent practitioner must additionally indicate their design patent practitioner status by placing the word ''design'' adjacent to the last forward slash of their S-signature.

* * * * *

■ 3. Amend § 1.32 by revising paragraph (a)(1) to read as follows:

§ 1.32 Power of attorney.

(a) * * *

(1) *Patent practitioner* means a registered patent attorney or registered patent agent under § 11.6. An attorney or agent registered under § 11.6(d) may only act as a practitioner in design patent applications or other design patent matters or design patent proceedings.

* * * * *

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

■ 4. The authority citation for part 11 continues to read as follows:

Authority: U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 2(b)(2), 32, 41; Sec. 1, Pub. L. 113–227, 128 Stat. 2114.

■ 5. Amend § 11.1 by:
■ a. Adding, in alphabetical order, the definition for ''Design patent practitioner,'' and
■ b. Revising the definitions of ''Practitioner'' and ''Roster or register.''

The addition and revisions read as follows:

§ 11.1 Definitions.

* * * * *

Design patent practitioner means a practitioner who is registered under § 11.6(d).

* * * * *

Practitioner means:

(1) An attorney or agent registered to practice before the Office in patent matters under § 11.6;

(2) An individual authorized under 5 U.S.C. 500(b), or otherwise as provided by § 11.14(a), (b), and (c), to practice before the Office in trademark matters or other non-patent matters;

(3) An individual authorized to practice before the Office in patent matters under § 11.9(a) or (b); or

(4) An individual authorized to practice before the Office under § 11.16(d).

* * * * *

Roster or *register* means a list of individuals who have been registered as a patent attorney, patent agent, or design patent practitioner.

* * * * *

■ 6. Amend § 11.5 by:
■ a. Revising paragraph (b)(1),
■ b. Re-designating paragraph (b)(2) as (b)(3), and
■ c. Adding new paragraph (b)(2).

The revisions and addition 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 or 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 an interference, derivation, and/or reexamination proceeding, a petition, an appeal to or any other proceeding before the Patent Trial and Appeal Board, or any other patent proceeding. Registration to practice before the Office in patent matters authorizes the performance of those services that are reasonably necessary and incident to the preparation and prosecution of patent applications or other proceedings before the Office involving a patent application or patent in which the practitioner is authorized to participate. The services include:

(i) Considering the advisability of relying upon alternative forms of protection which may be available under State law, and

(ii) Drafting an assignment or causing an assignment to be executed for the patent owner in contemplation of filing or prosecution of a patent application for the patent owner, where the practitioner represents the patent owner after a patent issues in a proceeding before the Office, and when drafting the assignment the practitioner does no more than replicate the terms of a previously existing oral or written obligation of assignment from one person or party to another person or party.

(2) *Practice before the Office in design patent matters.* (i) Practice before the Office in design patent matters includes, but is not limited to, preparing or prosecuting a design patent application; consulting with or giving advice to a client in contemplation of filing a design patent application or other document with the Office; drafting the specification or claim of a design 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 design invention; drafting a reply to a communication from the Office regarding a design patent application; and drafting a communication for an interference, derivation, and/or reexamination proceeding, a petition, an appeal to or any other design patent proceeding before the Patent Trial and Appeal Board, or any other design patent proceeding.

(ii) Design patent registration to practice before the Office in design patent matters authorizes the performance of those services that are reasonably necessary and incident to the preparation and prosecution of design patent applications or other proceedings before the Office involving a design patent application or design patent in which the practitioner is authorized to participate. The services include:

(A) Considering the advisability of relying upon alternative forms of protection which may be available under State law, and

(B) Drafting an assignment or causing an assignment to be executed for the design patent owner in contemplation of filing or prosecution of a design patent application for the design patent owner,

where the design patent practitioner represents the design patent owner after a design patent issues in a proceeding before the Office, and when drafting the assignment the design patent practitioner does no more than replicate the terms of a previously existing oral or written obligation of assignment from one person or party to another person or party.

* * * * *

■ 7. Amend § 11.6 by:

■ a. Re-designating paragraph (d) as paragraph (e), and

■ b. Adding new paragraph (d).

The revision and addition read as follows:

§ 11.6 Registration of attorneys and agents.

* * * * *

(d) *Design patent practitioners.* Any citizen of the United States who is an attorney and who fulfills the requirements of this part may be registered as a design patent attorney to practice before the Office in design patent proceedings. Any citizen of the United States who is not an attorney, and who fulfills the requirements of this part may be registered as a design patent agent to practice before the Office in design patent proceedings.

* * * * *

■ 8. Amend § 11.8 by revising paragraph (b) to read as follows:

§ 11.8 Oath and registration fee.

* * * * *

(b) An individual shall not be registered as an attorney under § 11.6(a), registered as an agent under § 11.6(b) or (c), registered as a design patent practitioner under § 11.6(d), or granted limited recognition under § 11.9(b) unless, within two years of the mailing date of a notice of passing the registration examination or of a waiver of the examination, the individual files with the OED Director a completed Data Sheet, an oath or declaration prescribed by the USPTO Director, and the registration fee set forth in § 1.21(a)(2) of this subchapter. An individual seeking registration as an attorney under § 11.6(a) must provide a certificate of good standing of the bar of the highest court of a State that is no more than six months old.

* * * * *

■ 9. Amend § 11.10 by revising paragraph (b)(1) introductory text and (b)(2) introductory text to read as follows:

§ 11.10 Restrictions on practice in patent matters; former and current Office employees; government employees.

* * * * *

(b) * * *

(1) To not knowingly act as an agent, attorney, or design patent practitioner for or otherwise represent any other person:

* * * * *

(2) To not knowingly act within two years after terminating employment by the Office as agent, attorney, or design patent practitioner for, or otherwise represent any other person:

* * * * *

■ 10. Amend § 11.16 by revising paragraph (c)(1)(i) to read as follows:

§ 11.16 Requirements for admission to the USPTO Law School Clinic Certification Program.

* * * * *

(c) * * *

(1) * * *

(i) Be registered under § 11.6(a) or (b) as a patent practitioner in active status and good standing with OED;

* * * * *

■ 11. Amend § 11.704 by revising paragraph (b) to read as follows:

§ 11.704 Communication of fields of practice and specialization.

* * * * *

(b) A registered practitioner under § 11.6(a) who is an attorney may use the designation ''Patents,'' ''Patent Attorney,'' ''Patent Lawyer,'' ''Registered Patent Attorney,'' or a substantially similar designation. A registered practitioner under § 11.6(b) who is not an attorney may use the designation ''Patents,'' ''Patent Agent,'' ''Registered Patent Agent,'' or a substantially similar designation. A registered practitioner under § 11.6(d) who is an attorney may use the designation ''Design Patent Attorney.'' A registered practitioner under § 11.6(d) who is not an attorney may use the designation ''Design Patent Agent.'' Unless authorized by § 11.14(b), a registered patent agent shall not hold themself out as being qualified or authorized to practice before the Office in trademark matters or before a court.

* * * * *

PART 41—PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 12. The authority citation for part 41 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135, and Pub. L. 112–29.

■ 13. Amend § 41.106 by revising paragraph (f)(4) to read as follows:

§ 41.106 Filing and service.

* * * * *

(f) * * *

(4) A certificate made by a person other than a registered practitioner must be in the form of an affidavit.

Katherine K. Vidal,

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

[FR Doc. 2023–10410 Filed 5–15–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 230510–0129; RTID 0648–XC872]

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications; 2023–2024 Annual Specifications and Management Measures for Pacific Sardine

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement annual harvest specifications and management measures for the northern subpopulation of Pacific sardine (hereafter, Pacific sardine), for the fishing year from July 1, 2023, through June 30, 2024. The proposed action would prohibit most directed commercial fishing for Pacific sardine off the coasts of Washington, Oregon, and California. Pacific sardine harvest would be allowed only for use as live bait, in minor directed fisheries, as incidental catch in other fisheries, or as authorized under exempted fishing permits. The incidental harvest of Pacific sardine would be limited to 20 percent by weight of all fish per trip when caught with other stocks managed under the Coastal Pelagic Species Fishery Management Plan, or up to 2 metric tons per trip when caught with non-Coastal Pelagic Species stocks. The proposed annual catch limit for the 2023–2024 Pacific sardine fishing year is 3,953 metric tons. This proposed rule is intended to conserve, manage, and rebuild the Pacific sardine stock off the U.S. West Coast.

DATES: Comments must be received by May 31, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–