

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO-P-2005-0021]

RIN 0651-AB92

Changes To Facilitate Electronic Filing of Patent Correspondence

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is amending the rules of practice to support implementation of the Office's electronic filing system (EFS) for patent correspondence, and in particular, the Web-based electronic filing system (EFS-Web). EFS-Web permits most patent correspondence, that is, most patent applications and other patent related documents, to be submitted in a portable document file ("PDF") format. The major changes that the Office is adopting are changes to provide patent users with a process for showing that correspondence submitted in an application which has entered national stage under 35 U.S.C. 371 submitted via EFS-Web was actually received by the Office by relying on the acknowledgment receipt, and to treat certain correspondence as received, for timeliness purposes, as of the date submitted by applicant rather than the date received by the Office if the correspondence is filed via EFS-Web.

DATES: *Effective Date:* January 23, 2007. The changes apply to any paper, application, or reexamination proceeding filed in the Office on or after January 23, 2007.

FOR FURTHER INFORMATION CONTACT: Fred A. Silverberg ((571) 272-7719), Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, or Robert A. Clarke ((571) 272-7735), Deputy Director of the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, directly by phone, or by facsimile to (571) 273-7719, or by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (Office) is amending the rules of practice to support implementation of the Office's electronic filing system (EFS) for patent correspondence, and in particular, the new Web-based

electronic filing system (EFS-Web), which went into production (for the public) on March 17, 2006. Specifically, the changes in this final rule: (1) Provide patent users with a process for showing that certain national stage correspondence submitted via EFS-Web was actually received by the Office by relying on the acknowledgment receipt; and (2) create a new certificate of EFS-Web transmission, which will allow the Office to treat certain correspondence as received (for timeliness purposes) as of the date submitted by applicant rather than the date received by the Office if the correspondence is filed by EFS-Web. The procedure for the certificate of EFS-Web transmission is similar to the procedure for the existing certificate of mailing or transmission under § 1.8. For example, correspondence sent in reply to an Office action setting a three-month shortened statutory period for reply would be considered timely if transmitted via EFS-Web at 11:59 p.m. Pacific Time on the last day of the three-month period for reply even though it was received in the Office more than three months from the mailing of the Office action. Thus, the rules are amended so that EFS-Web submissions would be treated analogously to submissions filed via First-Class Mail or facsimile transmission with a certificate of mailing or transmission. This notice is also making minor changes to §§ 1.4, 1.6, and 1.33 to align the rules of practice to existing practices regarding EFS-Web.

Discussion of EFS-Web: The Office's electronic filing system previously provided two distinct electronic filing systems for filing patent correspondence namely: (1) EFS-Web, and (2) the client-side components ePAVE for form generation, validation and submission to the Office in combination with EFS-ABX for authoring the patent application specification. Prior to EFS-Web, the Office only provided for the electronic submission of limited patent correspondence using ePAVE and EFS-ABX. ePAVE and EFS-ABX were discontinued on November 1, 2006. See *Retirement of Electronic Filing System—Application Body Extensible Markup Language (EFS-ABX) and Electronic Packaging and Validation Engine (ePAVE) Components*, 1311 *Off. Gaz. Pat. Off.* 155 (October 24, 2006). Thus, EFS-Web is the sole system for electronic filing of most patent correspondence. EFS-Web permits most patent applications and other patent-related documents, to be submitted in a "PDF" file format. In addition, EFS-Web does not require any significant client side components (unlike ePAVE and

EFS-ABX). Accordingly, EFS-Web allows users to streamline processing and filing of patent correspondence, and better integrates electronic filing into their current computer systems.

Under EFS-Web, correspondence officially submitted is accorded a "receipt date," which is the date the correspondence was received by the Office (e.g., in Alexandria, Virginia (Eastern Time zone)). The receipt date is not limited to an official business day, but can be a Saturday, Sunday or Federal holiday within the District of Columbia. Correspondence is officially submitted to the Office via EFS-Web when a user clicks the submit button on the Confirm and Submit screen after the correspondence has been uploaded to the USPTO server for, *inter alia*, user review. An acknowledgment receipt is automatically, electronically sent to the person filing the correspondence after the correspondence is officially submitted. The acknowledgment receipt contains the "receipt date," the time the correspondence was received at the Office (not the local time at the submitter's location), and a full listing of the correspondence submitted. Accordingly, an acknowledgment receipt is a legal equivalent of a post card receipt described in the Manual of Patent Examining Procedure (MPEP), Section 503. As the acknowledgment receipt contains the time the correspondence was received at the Office, users may not be able to solely rely on the acknowledgment receipt to support a position that correspondence was submitted at a particular local time. Therefore, users are advised to keep a copy of papers submitted, including a certification of EFS-Web transmission under § 1.8, as evidence of the local time of all submissions to support a position that correspondence was submitted at a particular local time in the event such evidence is needed. For the filing of applications, the official filing date will continue to be stated on the Filing Receipt under § 1.54(b), which is sent to applicants after the submitted application parts are reviewed for compliance with the filing date requirements.

An acknowledgment receipt will not be generated until EFS-Web correspondence is officially submitted to and received by the Office. If a user officially submits correspondence to the Office by clicking on the submit button on the Confirm and Submit screen in EFS-Web, but no acknowledgment receipt is generated thereafter, the user should check private PAIR, if possible, for the acknowledgment receipt, which should be entered in private PAIR a short period of time after the

correspondence is officially submitted to the Office. If no acknowledgment receipt is available in private PAIR or the user does not have access to private PAIR, then the user should contact the Patent Electronic Business Center (EBC) for assistance. If a user becomes disconnected from EFS-Web prior to officially submitting correspondence to the Office or who otherwise has difficulty submitting correspondence through EFS-Web, the user is encouraged to contact the Patent EBC for assistance. Full technical support is currently available through the Patent EBC during their Standard Hours of Operation, which are Monday through Friday from 6 a.m. until midnight (eastern time), and Saturday and Sunday from 10 a.m. through 6 p.m. (eastern time) at 866-217-9197 (toll-free). The patent EBC may also be contacted by E-mail: ebc@uspto.gov or FAX: 571-273-0177. Limited assistance is available at all other times through the Office's Electronic Business Support (EBS) at 1-800-786-9199 or 571-272-1000.

If a transmission is attempted during a time when the Office's electronic filing system is down, the Office will not be able to accept any correspondence electronically. In this situation, the user is advised to use alternative filing methods. For the filing of an application, alternative methods to establish the filing date for an application are Express Mail under § 1.10 or hand-delivery to the Office. (Note that new applications filed under § 1.53 cannot be submitted by facsimile transmission (§ 1.6(d)(3)).) For other patent correspondence, alternative methods to establish timeliness of a submission are First-Class Mail with a certificate of mailing under § 1.8 (if applicable), facsimile transmission with a certificate of transmission under § 1.8 (if applicable), Express Mail under § 1.10, or hand-delivery to the Office. Certificate of mailing or transmission procedures under § 1.8 do not apply to: (1) The filing of a national patent application specification and drawing or other correspondence for the purpose of obtaining an application filing date, including a request for a continued prosecution application of a design application under § 1.53(d) (*see* § 1.8(a)(2)(i)(A)); (2) the filing of an international application for patent (*see* § 1.8(a)(2)(i)(D)); (3) the filing of correspondence in an international application before the U.S. Receiving Office, the U.S. International Searching Authority, or the U.S. International Preliminary Examining Authority (*see* § 1.8(a)(2)(i)(E)); and (4) the filing of a

copy of the international application and the basic national fee necessary to enter the national stage, as specified in § 1.495(b) (*see* § 1.8(a)(2)(i)(F)) regardless of the media that is used. Likewise, if the user cannot pay fees online because the RAM interface is down, the user should pay fees via alternative methods such as authorizing payment to a deposit account or by a credit card in a document (*e.g.*, a fee transmittal). Accordingly, users are strongly advised to submit their correspondence via EFS-Web sufficiently early in the day to allow time for alternative filing or payment methods when submissions via EFS or RAM cannot be initiated or correctly completed.

As EFS-Web is easy to use and readily available twenty-four hours a day, every day, some users may find it tempting to include correspondence to multiple applications in one, single EFS-Web submission, or to submit the required reply piecemeal over multiple sessions. Such submissions may result in processing delays in the Office, and should be avoided. In order to facilitate proper processing of any correspondence submitted via EFS-Web, each submission session must be limited to correspondence for a single application, with each distinct reply being contained in a separate paper (*see* § 1.4(c)). The application number or the patent number for which the correspondence pertains must be included in any submission to assure proper matching with the application file.

For more information on EFS-Web, *see* the Legal Framework for EFS-Web (<http://www.uspto.gov/ebc/portal/efs/legal.htm>), which provides guidance on the background statutes, regulations and policies that support the Office electronic filing system, including EFS-Web and the use of S-signature therein. The Legal Framework for EFS-Web is a valuable reference for applicants and patent practitioners using EFS-Web.

Although EFS-Web accepts most patent correspondence, there are still certain types of correspondence that are not permitted to be filed by EFS-Web, such as any correspondence for reexamination proceedings. *See* the Legal Framework for EFS-Web for a current list of types of correspondence that are not permitted to be filed using EFS-Web. If any additional types of correspondence are permitted to be filed via EFS-Web, they will be announced on the Office's Web site and will be added to the Legal Framework for EFS-Web in due course. Therefore, users are advised to periodically review the Legal Framework for EFS-Web to view current information on types of correspondence

that are not permitted to be filed through EFS-Web.

Discussion of Specific Rules

Sections 1.4, 1.6, 1.8, and 1.33 governing applicant correspondence are amended to reflect use of electronic commerce, in particular EFS-Web, as follows:

Section 1.4: Section 1.4(d)(2) is amended to delete the reference to the character coded signature of paragraph (d)(3), which was only applicable to the ePAVE software, a component of the Office's older, discontinued patent electronic filing system. Since S-signatures are acceptable signatures in EFS-Web submissions in accordance with § 1.4(d)(2), this paragraph is also amended to eliminate the reference to "EFS Tag(ged) Image File Format (TIFF)" because EFS-Web does not accept TIFF attachments. In addition, a reference to § 1.6(a)(4) is added as a conforming amendment. Accordingly, the relevant phrase has been rewritten as "via the Office Electronic Filing System as an attachment as provided in § 1.6(a)(4)."

A legible electronic image of a handwritten signature inserted, or copied and pasted by the person signing the correspondence into the correspondence may be considered to be an acceptable signature under § 1.4(d)(2) provided the signature is surrounded by a first single forward slash mark before the electronic image and a second single forward slash mark after the electronic image. That is, the legible electronic image of a handwritten signature must be enclosed between two single forward slashes, and the signer's name indicated below or adjacent to the signature as required by § 1.4(d)(2). The slashes must be inserted in the correspondence prior to, or at the same time as, the insertion of the signature. The slashes must not be added after the insertion of the signature.

Section 1.4(d)(3) is amended to provide requirements in using Office forms. The character coded signature requirements of former paragraph (d)(3) have been removed because such requirements were only applicable to the ePAVE software, which is now discontinued.

The Office provides forms to the public to use in certain situations to assist in the filing of correspondence for a certain purpose and to meet certain requirements. Use of the forms for purposes for which they were not designed is prohibited. No changes to certification statements on the Office forms (*e.g.*, oath or declaration forms, terminal disclaimer forms, petition forms, and the nonpublication request

form) may be made. For example, the following statements are certification statements on an oath or declaration form PTO/SB/01: (1) "I believe the inventor(s) named below to be the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought on the invention entitled;" (2) "I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment specifically referred to above;" (3) "I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application;" and (4) "I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon." As another example, the following statement is a certification on the nonpublication request form PTO/SB/35: "I hereby certify that the invention disclosed in the attached application has not and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication at eighteen months after filing." Other Office forms for patent applications or patents that contain certification statements include, but are not limited to, forms PTO/SB/01, PTO/SB/01A, PTO/SB/03, PTO/SB/03A, PTO/SB/04, PTO/SB/25, PTO/SB/26, PTO/SB/28, PTO/SB/35, PTO/SB/51, PTO/SB/51s, PTO/SB/53, PTO/SB/62, PTO/SB/63, PTO/SB/64, PTO/SB/64a, PTO/SB/66, and PTO/SB/101-110.

Most of the Office forms are static in that the forms do not allow users to customize the form to their particular needs. The existing text of a static form, other than a certification statement, may be modified, deleted or added to by a party, only if information identifying the form as an Office form (e.g., the form number and the Office of Management and Budget (OMB) approval information in the header and footer of the form) is removed. For example, a static form

could be amended to add additional signature blocks if the form number and OMB information is removed. EFS-Web forms, however, do allow for customization. For example, users may add, remove, or change certain additional data blocks (e.g., signature blocks) as needed by selecting the "add" or "remove" buttons on the EFS-Web forms. These EFS-Web forms can be customized in a way provided for by the form without removing the text identifying the form as an Office form (e.g., the form number and OMB information in the header and the footer). Currently, only forms PTO/SB/08 Information Disclosure Statement, PTO/SB/14 Application Data Sheet, PTO/SB/28 Petition to Make Special under the Accelerated Examination Program, PTO/SB/30 Request for Continued Examination (RCE) Transmittal, and PTO/SB/66 Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)) are EFS-Web forms.

The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any form with text identifying the form as an Office form (e.g., the form number and the OMB information in the header and footer) by a party, whether a practitioner or non-practitioner, constitutes a certification under § 10.18(b) that the existing text and any certification statement on the form has not been altered other than permitted by EFS-Web customization.

Section 1.4(d)(4) is amended to make conforming changes due to the removal of the character coded signature requirements of former paragraph (d)(3).

Section 1.6: Section 1.6(a)(4) is added to indicate that most patent applications and other patent correspondence, including, *inter alia*, amendments, drawing changes and extensions of time, may be submitted using the Office electronic filing system only in accordance with the Office electronic filing system requirements (see the Legal Framework for EFS-Web, which sets forth the electronic filing system requirements (<http://www.uspto.gov/ebs/portal/efs/legal.htm>)). The phrase "using the Office electronic filing system only in accordance with the Office electronic filing system requirements" codifies and continues the current EFS practice.

Under EFS-Web, correspondence is accorded a "receipt date" that is the date the correspondence is received (Eastern Time) at the Office's correspondence address set forth in § 1.1 (e.g., Alexandria, Virginia) when it was officially submitted. The receipt

date is not limited to an official business day, but can be a Saturday, Sunday or Federal holiday within the District of Columbia. Correspondence is officially submitted to the Office via EFS-Web when a user clicks the submit button on the Confirm and Submit screen after the correspondence has been uploaded to the USPTO server for, *inter alia*, user review.

The "receipt date" is recorded on an acknowledgment receipt, which is automatically sent to the person filing the correspondence after the correspondence is officially submitted. Under EFS-Web, the acknowledgment receipt contains a full listing of the correspondence submitted, including the count of pages and/or byte size for each piece of correspondence in the submission. Accordingly, the acknowledgment receipt is a legal equivalent of a post card receipt described in the Manual of Patent Examining Procedure (MPEP), Section 503. For the filing of applications, the official filing date will continue to be stated on the filing receipt under § 1.54(b), which is sent to applicants after the submitted application parts are reviewed for compliance with the filing date requirements.

Section 1.6(g) is added to provide a new procedure for establishing that national stage correspondence, national stage filings, or follow-on correspondence required by § 1.495(b), which had been submitted via EFS was, in fact, received by the Office in the event that the Office has no evidence of receipt.

To begin entry into the national stage, applicant is required to comply with § 1.495(b) within thirty months from the priority date. Thus, applicant must pay the basic national fee on or before thirty months from the priority date and be sure that a copy of the international application has been received by the U.S. Designated or Elected Office prior to expiration of thirty months from the priority date. Where the international application was filed with the United States Receiving Office as the competent receiving Office, the copy of the international application referred to in § 1.495(b) is not required. Payment of the basic national fee will indicate applicant's intention to enter the national stage and will provide a U.S. correspondence address in most instances. Applicants cannot pay the basic national fee with a surcharge after the thirty-month deadline. Failure to pay the basic national fee within thirty months from the priority date will result in abandonment of the application. The time for payment of the basic fee is not extendable. Similarly, the copy of the

international application, if required under § 1.495(b), must be provided within thirty months from the priority date to avoid abandonment of the application. Accordingly, the ability to present evidence of timely receipt of national stage correspondence is critical to potentially avoid abandonment of the application.

This new procedure is equivalent to the Office's domestic filing process for providing evidence of the Office's receipt of a continued prosecution application (CPA) for a design application under § 1.53(d) submitted by facsimile transmission in the event that the Office does not have evidence of receipt, as set forth in § 1.6(f) and MPEP 502.01. For a CPA, the procedure for providing evidence of receipt by the Office requires a petition be filed requesting that the CPA be accorded a filing date as of the date the CPA is shown to have been transmitted to and received in the Office (§ 1.6(f)). The showing must include, *inter alia*, a copy of the sending unit's report confirming transmission of the application or evidence that came into being after the complete transmission of the application and within one business day of the complete transmission of the application. Under the new procedure for providing evidence of a prior submission via EFS-Web, the petition and showing necessary to accept the re-submission of the correspondence as being filed on an earlier date is the same as the petition and showing required under § 1.6(f) with the exception that the acknowledgment receipt, or other equivalent evidence, must be provided rather than the sender's facsimile report.

If applicant has the acknowledgment receipt, applicant must include a copy of the acknowledgment receipt as evidence of the submission of the national stage correspondence. In the rare situations where applicant does not have the acknowledgment receipt, equivalent evidence, which is another piece of correspondence that shows substantially similar evidence that is provided by the acknowledgment receipt, will be considered in support of the petition.

Section 1.8: Section 1.8(a)(1)(i) is amended by adding new paragraph (C) to permit certain correspondence, excluding correspondence not entitled to a certificate of mailing or transmission or not permitted to be electronically transmitted, to be treated as being timely received on the local date at the location where submitted if filed with a certificate of transmission via the Office's electronic filing system, which is EFS-Web. See the Legal Framework for EFS-Web for a current

list of types of correspondence that are not permitted to be filed using EFS-Web, such as any correspondence for reexamination proceedings. This rule change will provide a similar procedure for correspondence filed via EFS-Web that currently exists for correspondence filed via First-Class Mail under § 1.10 and facsimile transmission using a certificate of mailing or transmission under § 1.8. Users should place the certificate of transmission on the correspondence (e.g., transmittal letter) submitted under EFS-Web in a similar manner as they would for correspondence submitted by facsimile transmission. See MPEP 512 for more information on certificate of mailing or transmission under § 1.8.

Prior to this amendment to § 1.8, a person could state on certain papers directed to the Office, the date on which the paper will be deposited in the United States Postal Service or transmitted by facsimile. This amendment to § 1.8 will permit a similar procedure for establishing timeliness when correspondence is filed via EFS-Web. Accordingly, if the date stated in the correspondence submitted via EFS-Web is within the period for reply, the reply, in most instances, will be considered to be timely. This is true even if the paper does not actually reach the Office until after the end of the period for reply.

Even with such procedures under § 1.8, the Office will continue its usual practice of recording the receipt date (e.g., "Office Date" Stamp) on all papers received through the mail, by facsimile, or via EFS-Web except those filed under § 1.10 (See MPEP 513). The receipt date will also be the date that is entered on Office records and from which any subsequent periods are calculated.

The certificate of mailing or transmission under § 1.8 is not available for all correspondence. Paragraph (a)(2) of § 1.8 lists some correspondence for which the certification of mailing or transmission does not apply to, and no benefit will be given to such certificates if used. The list enumerated in § 1.8(a)(2) is not exhaustive, and the provisions of § 1.8 do not apply to the time periods or situations that have been explicitly excluded from § 1.8. For example, provisions of § 1.8(a) do not apply to time periods and situations set forth in §§ 1.217(e) and 1.703(f) because the exceptions are provided explicitly in §§ 1.217(e) and 1.703(f).

Paragraphs (b) and (c) of § 1.8 will also apply to a certification of EFS-Web transmission by new paragraph (a)(1)(i)(C) of this section. Paragraphs (b) and (c) concern the situation where a paper containing a certificate was timely

filed, but never received by the Office. Specifically, § 1.8(b) permits a party to notify the Office of a previous mailing, or transmission, of correspondence when a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, but Office records do not show receipt of the correspondence. Applicant may notify the Office of the previous mailing or transmission and supply a duplicate copy of the previously mailed or transmitted correspondence and a statement attesting on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the person signing the statement did not sign the certificate of mailing or transmission, then the person signing the statement should explain how they have firsthand knowledge of the previous timely mailing or transmission. Such a statement should be filed promptly after the person becomes aware that the Office has not received the correspondence. Before notifying the Office of a previously submitted correspondence that appears not to have been received by the Office, applicants should check the Office's private Patent Application Information Retrieval (PAIR) System to see if the correspondence has been entered into the application file.

For EFS-Web submissions, applicants are encouraged to use the acknowledgment receipt generated by EFS-Web, if available, as part of the evidence to support the statement required by § 1.8(b)(3). An acknowledgment receipt is automatically electronically sent to the person filing the correspondence after the correspondence is officially submitted. As the acknowledgment receipt contains the time (Eastern Time) the correspondence was received at the Office, users may not be able to solely rely on the acknowledgment receipt to support a position that correspondence was submitted at a particular local time. Therefore, users are advised to keep a copy of papers submitted, including a certification of EFS-Web transmission, as evidence of the local time of all EFS-Web submissions to support a position that correspondence was submitted at a particular local time in the event such evidence is needed.

Section 1.33: Section 1.33(a) is amended to accommodate changes due to electronic commerce. The Office anticipates that, in the near term future, applicants may have the option to view Office communications via the Office's private PAIR system instead of receiving mailed communications. Also, when a submitter files correspondence using

EFS-Web, an acknowledgment receipt is typically generated and automatically sent via e-mail to the submitter. The acknowledgment receipt is also placed in the Office's electronic file and is viewable in private PAIR. To accommodate these processes, the phrases “, or otherwise make available,” and “the person associated with” was added so the third sentence will read as follows: “The Office will direct, or otherwise make available, all notices, official letters, and other communications relating to the application to the person associated with the correspondence address.” In addition, the word “generally” was added to the following sentence as a conforming change: “The Office will generally not engage in double correspondence with an applicant and a patent practitioner, or with more than one patent practitioner except as deemed necessary by the Director.”

Rule Making Considerations

Administrative Procedure Act

This notice adopts changes to the rules of practice that concern the manner of submitting certain correspondence via the Office's electronic filing systems. Specifically, the changes in this final rule: (1) Provide patent users with a process for showing that certain national stage correspondence submitted via EFS-Web was actually received by the Office by relying on the acknowledgment receipt; and (2) treat certain correspondence as received (for timeliness purposes) as of the date submitted by applicant rather than the date received by the Office if the correspondence is filed by EFS-Web, which will provide a similar procedure as the existing certificate of mailing or transmission under § 1.8. Therefore, these rule changes involve interpretive rules, or rules of agency practice and procedure. *See Bachow Communications Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are “rules of agency organization, procedure, or practice” and exempt from the Administrative Procedure Act's notice and comment requirement); *see also Merck & Co., Inc. v. Kessler*, 80 F.3d 1543, 1549–50, 38 USPQ2d 1347, 1351 (Fed. Cir. 1996) (the rules of practice promulgated under the authority of former 35 U.S.C. 6(a) (now in 35 U.S.C. 2(b)(2)) are not substantive rules (to which the notice and comment requirements of the Administrative Procedure Act apply)), and *Fressola v. Manbeck*, 36 USPQ2d 1211, 1215 (D.D.C. 1995) (“it is extremely doubtful whether any of the rules formulated to

govern patent or trade-mark practice are other than ‘interpretive rules, general statements of policy, * * * procedure, or practice.’”) (quoting C.W. Ooms, *The United States Patent Office and the Administrative Procedure Act*, 38 Trademark Rep. 149, 153 (1948)). Accordingly, prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law).

Regulatory Flexibility Act

As discussed previously, the changes in this final rule involve rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). As prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553 (or any other law) for the changes in this final rule, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for the changes in this final rule. *See* 5 U.S.C. 603.

Executive Order 13132

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

Executive Order 12866

This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This notice involves 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 *et seq.*). The changes in this notice are limited to amending the rules of practice to support implementation of the Office's electronic filing system (EFS) for patent correspondence, and in particular, the new web-based electronic filing system (EFS-Web). The changes in this final rule: (1) Provide patent users with a process for showing that certain national stage correspondence submitted via EFS-Web was actually received by the Office by relying on the acknowledgment receipt; and (2) treat certain correspondence as received (for timeliness purposes) as of the date submitted by applicant rather than the date received by the Office if the correspondence is filed by EFS-Web,

which will provide a similar procedure as the existing certificate of mailing or transmission under § 1.8. The collections of information involved in this notice have been reviewed and previously approved by OMB under the following OMB control numbers: 0651–0021, 0651–0031 and 0651–0032. The United States Patent and Trademark Office is not resubmitting the information collections package for OMB control numbers 0651–0031 and 0651–0032 to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with the information collection under OMB control numbers 0651–0031 and 0651–0032. The United States Patent and Trademark Office is resubmitting the information collections package for OMB control numbers 0651–0021 to OMB for its review and approval because the changes in this notice do affect the information collection requirements associated with the information collection under OMB control number 0651–0021.

The title, description and respondent description of the information collection under OMB control number 0651–0021 are shown below with estimates of the annual reporting burdens. Included in the estimates is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Number: 0651–0021.

Title: Patent Cooperation Treaty.

Form Numbers: PCT/RO/101, PCT/RO/134, PTO–1382, PTO–1390, PCT/IPEA/401, PTO/SB/61/PCT, PTO/SB/64/PCT, PCT/Model of power of attorney, PCT/Model of general power of attorney.

Type of Review: Approved through March 2007.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 355,655.

Estimated Time per Response: 15 minutes to 8 hours.

Estimated Total Annual Burden Hours: 347,889.

Needs and Uses: The general purpose of the Patent Cooperation Treaty (PCT) is to standardize the format and filing procedures so that applicants may file one international application in one location, in one language, and pay one initial set of fees to seek protection for an invention in more than 100 designated countries. This collection of information is necessary so that respondents can file an international

patent application and so that the USPTO can fulfill its duties to process, search, and examine international patent applications under the provisions of the PCT.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office.

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 in 37 CFR Part 1

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

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

PART 1—RULES OF PRACTICE IN PATENT CASES

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

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

■ 2. Section 1.4 is amended by revising paragraphs (d)(2) introductory text, (d)(3), and (d)(4)(ii) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(d) * * *

(2) *S-signature.* An S-signature is a signature inserted between forward slash marks, but not a handwritten signature as defined by § 1.4(d)(1). An S-signature includes any signature made by electronic or mechanical means, and any other mode of making or applying a signature not covered by a handwritten signature of § 1.4(d)(1). Correspondence being filed in the Office in paper, by facsimile transmission as provided in § 1.6(d), or via the Office electronic filing system as an attachment as provided in § 1.6(a)(4), for a patent application, patent, or a reexamination proceeding may be S-

signature signed instead of being personally signed (*i.e.*, with a handwritten signature) as provided for in paragraph (d)(1) of this section. The requirements for an S-signature under this paragraph (d)(2) of this section are as follows.

* * * * *

(3) *Forms.* The Office provides forms to the public to use in certain situations to assist in the filing of correspondence for a certain purpose and to meet certain requirements for patent applications and proceedings. Use of the forms for purposes for which they were not designed is prohibited. No changes to certification statements on the Office forms (*e.g.*, oath or declaration forms, terminal disclaimer forms, petition forms, and nonpublication request form) may be made. The existing text of a form, other than a certification statement, may be modified, deleted, or added to, if all text identifying the form as an Office form is removed. The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any Office form with text identifying the form as an Office form by a party, whether a practitioner or non-practitioner, constitutes a certification under § 10.18(b) of this chapter that the existing text and any certification statements on the form have not been altered other than permitted by EFS-Web customization.

(4) * * *

(ii) *Certifications as to the signature:*

(A) *Of another:* A person submitting a document signed by another under paragraph (d)(2) of this section is obligated to have a reasonable basis to believe that the person whose signature is present on the document was actually inserted by that person, and should retain evidence of authenticity of the signature.

(B) *Self certification:* The person inserting a signature under paragraph (d)(2) of this section in a document submitted to the Office certifies that the inserted signature appearing in the document is his or her own signature.

* * * * *

■ 3. Section 1.6 is amended by adding new paragraphs (a)(4) and (g) to read as follows:

§ 1.6 Receipt of correspondence.

(a) * * *

(4) Correspondence may be submitted using the Office electronic filing system only in accordance with the Office electronic filing system requirements. Correspondence submitted to the Office by way of the Office electronic filing system will be accorded a receipt date, which is the date the correspondence is

received at the correspondence address for the Office set forth in § 1.1 when it was officially submitted.

* * * * *

(g) *Submission of the national stage correspondence required by § 1.495 via the Office electronic filing system.* In the event that the Office has no evidence of receipt of the national stage correspondence required by § 1.495, which was submitted to the Office by the Office electronic filing system, the party who submitted the correspondence may petition the Director to accord the national stage correspondence a receipt date as of the date the correspondence is shown to have been officially submitted to the Office.

(1) The petition of this paragraph (g) requires that the party who submitted such national stage correspondence:

(i) Informs the Office of the previous submission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence under § 1.495;

(ii) Supplies an additional copy of the previously submitted correspondence;

(iii) Includes a statement that attests on a personal knowledge basis, or to the satisfaction of the Director, that the correspondence was previously officially submitted; and

(iv) Supplies a copy of an acknowledgment receipt generated by the Office electronic filing system, or equivalent evidence, confirming the submission to support the statement of paragraph (g)(1)(iii) of this section.

(2) The Office may require additional evidence to determine if the national stage correspondence was submitted to the Office on the date in question.

■ 4. Section 1.8 is amended by revising paragraphs (a)(1)(i) and (b)(3) to read as follows:

§ 1.8 Certificate of mailing or transmission.

(a) * * *

(1) * * *

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail;

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); or

(C) Transmitted via the Office electronic filing system in accordance with § 1.6(a)(4); and

* * * * *

(b) * * *

(3) Includes a statement that attests on a personal knowledge basis or to the

satisfaction of the Director to the previous timely mailing, transmission or submission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement. If the correspondence was transmitted via the Office electronic filing system, a copy of an acknowledgment receipt generated by the Office electronic filing system confirming submission may be used to support this statement.

* * * * *

■ 5. Section 1.33 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1.33 Correspondence respecting patent applications, reexamination proceedings, and other proceedings.

(a) *Correspondence address and daytime telephone number.* When filing an application, a correspondence address must be set forth in either an application data sheet (§ 1.76), or elsewhere, in a clearly identifiable manner, in any paper submitted with an application filing. If no correspondence address is specified, the Office may treat the mailing address of the first named inventor (if provided, see §§ 1.76(b)(1) and 1.63(c)(2)) as the correspondence address. The Office will direct, or otherwise make available, all notices, official letters, and other communications relating to the application to the person associated with the correspondence address. For correspondence submitted via the Office's electronic filing system, however, an electronic acknowledgment receipt will be sent to the submitter. The Office will generally not engage in double correspondence with an applicant and a patent practitioner, or with more than one patent practitioner except as deemed necessary by the Director. If more than one correspondence address is specified in a single document, the Office will select one of the specified addresses for use as the correspondence address and, if given, will select the address associated with a Customer Number over a typed correspondence address. For the party to whom correspondence is to be addressed, a daytime telephone number should be supplied in a clearly identifiable manner and may be changed by any party who may change the correspondence address. The correspondence address may be changed as follows:

* * * * *

Dated: January 17, 2007.

Jon W. Dudas,

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

[FR Doc. E7-906 Filed 1-22-07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R06-OAR-2006-0386; FRL-8272-5]

Approval and Promulgation of Implementation Plans; Texas; El Paso County Carbon Monoxide Redesignation to Attainment, and Approval of Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On January 20, 2006, the Texas Commission on Environmental Quality (TCEQ) submitted a State Implementation Plan (SIP) revision to request redesignation of the El Paso carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). This submittal also included a CO maintenance plan for the El Paso area and associated Motor Vehicle Emission Budgets (MVEBs). The maintenance plan was developed to ensure continued attainment of the CO NAAQS for a period of 10 years from the effective date of EPA approval of redesignation to attainment. In this action, EPA is approving the El Paso CO redesignation request and the maintenance plan with its associated MVEBs as satisfying the requirements of the Federal Clean Air Act (CAA) as amended in 1990.

DATES: This rule is effective on March 26, 2007 without further notice, unless EPA receives relevant adverse comment by February 22, 2007.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2006-0386, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

- *E-mail:* Mr. Thomas Diggs at diggs.thomas@epa.gov. Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- *Fax:* Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.

- *Mail:* Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L),

Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- *Hand Delivery:* Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2006-0386. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public