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DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket Number 010202029-1029-01]

RIN 0651-AB35

Revision of Patent Cooperation Treaty Application Procedure

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is amending its rules of practice relating to applications filed under the Patent Cooperation Treaty (PCT). These changes conform the United States rules of practice to the Regulations under the PCT which became effective March 1, 2001. The result will be more streamlined procedures for filing and prosecuting international applications under the PCT.

DATES: *Effective Date:* March 1, 2001.

Applicability Date: The changes to §§ 1.434, 1.451, 1.471, and 1.484 apply to all international applications filed before, on, or after March 1, 2001. The changes to §§ 1.494, 1.495, and 1.497 apply to international applications entering the national phase on or after March 1, 2001 (irrespective of their filing date).

FOR FURTHER INFORMATION CONTACT:

Charles Pearson, Director, Office of PCT Legal Administration, by telephone at (703) 306-4145; or by mail addressed to: Box PCT, Commissioner for Patents, Washington, DC 20231; or by facsimile to (703) 308-6459, marked to the attention of Charles Pearson.

SUPPLEMENTARY INFORMATION: During a March 2000 meeting of the Governing Bodies of the World Intellectual Property Organization (WIPO), the PCT Assembly adopted amendments to the PCT Regulations, which took effect on March 1, 2001. The amended PCT Regulations were published in PCT Gazette 42/2000, Section IV, October 19, 2000. The resulting changes to PCT practice improve filing and processing procedures for applicants filing international applications. This final rule amends the rules of practice in title 37 of the Code of Federal Regulations to

conform them to corresponding changes made to the PCT Regulations that took effect on March 1, 2001.

Discussion of Specific Rules

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

Section 1.434(d) is amended to reflect that newly added PCT Rule 4.17(iv) allows applicants for the United States to file a declaration of inventorship as part of the PCT Request (Form PCT/RO/101).

Section 1.451(b) is amended to reflect a change in PCT Rule 4.1(c)(ii), which clarifies that a request for the receiving Office to prepare and transmit copies of priority documents, in which the priority documents were filed with the United States Patent and Trademark Office, may appear in the Request.

Section 1.471(c) is added to reflect that applicants may correct or add to the Request any declaration referred to in new PCT Rule 4.17 by a notice submitted to the International Bureau in accordance with new PCT Rule 26*ter*. Pursuant to PCT Rule 26*ter*, applicant may make such a correction or addition within a time limit of 16 months from the priority date or if the notice is received by the International Bureau

after the time limit, the notice will be considered to have been received on the last day of the time limit if it reaches the International Bureau before technical preparations for international publication have been completed.

Section 1.484(g) is added to reflect a change to PCT Rule 66.7(b). PCT Rule 66.7 allows an International Preliminary Examining Authority to ask for a translation of the priority document where the validity of the priority claim is relevant for the formulation of the opinion referred to in Article 33(1). Section 1.484 allows the United States International Preliminary Examining Authority, where the validity of the priority claim is relevant for the formulation of the opinion referred to in Article 33(1), to invite the applicant to furnish an English translation of the priority document within two months from the date of the invitation. If the translation is not furnished within that time limit, the international preliminary examination report may be established as if such priority had not been claimed.

Sections 1.494(c)(2), 1.495(c)(2) and 1.497(a) are amended to reflect new PCT Rules 4.17(iv), 26ter.1 and 51bis.2(b)(iii). Newly added PCT Rule 4.17(iv) allows applicants for the United States to file a declaration either as part of the originally filed Request or within the time limit set forth in new PCT Rule 26ter.1. A declaration in accordance with PCT Rule 4.17(iv) is equivalent to the declaration required under § 1.63. If the declaration is not in accordance with PCT Rule 4.17(iv), but it is in compliance with § 1.497, the declaration will be accepted for the purposes of entry into the national stage in the United States. However, in such an instance, a supplemental oath or declaration complying with § 1.63 may still be required. In addition, § 1.497(a)(2) is also amended to conform to the current language of § 1.63(b)(1). *See Changes to Implement the Patent Business Goals*, 65 FR 54603, 54667 (Sept. 8, 2000), 1238 *Off. Gaz. Pat. Office* 77, 133 (Sept. 19, 2000) (Final Rule).

Sections 1.494(c) and (d) are amended and § 1.497(f) is added to indicate that applicants will be required to file a new oath or declaration, where applicants for the United States executed a declaration in accordance with PCT Rule 4.17(iv), and subsequently made changes to: (1) The application under PCT Rule 20.2; or (2) the inventorship under PCT Rule 92bis. In addition, where the inventorship has been changed under PCT Rule 92bis after the execution of any declaration under PCT Rule 4.17(iv), applicant must provide the following: (1) A statement from each

person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part; (2) the processing fee set forth in 37 CFR 1.17(i); and (3) if an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b)).

Section 1.494(g) is added to indicate that applicants will be required to file a new oath, declaration, or application data sheet where applicants for the United States filed a declaration in accordance with PCT Rule 4.17(iv), but made changes to the priority claim under PCT Rule 26bis after execution of the declaration under PCT Rule 4.17(iv).

Classification

Administrative Procedure Act

The United States rules of practice contained in title 37 CFR must conform to the PCT Articles and the Regulations annexed to the PCT. *See* PCT Article 27(1). This final rule merely implements corresponding changes required to conform United States rules for international applications to the amendments to the PCT Regulations which became effective on March 1, 2001. Accordingly, this final rule is covered by the foreign affairs function exception of 5 U.S.C. 553(a)(1), and may be adopted without prior notice and opportunity for public comment under 5 U.S.C. 553(b) and (c), or thirty-day advance publication under 5 U.S.C. 553(d). *See International Brotherhood of Teamsters v. Pena*, 17 F.3d 1478, 1486 (D.C. Cir. 1994).

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), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable.

Executive Order 13132

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

Executive Order 12866

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

Paperwork Reduction Act

This final rule 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 collection of information involved in this final rule has been reviewed and previously approved by OMB under the following control number 0651-0021.

The title, description and respondent collection is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of this final rule is to conform the United States rules of practice relating to applications filed under the PCT to the corresponding amendments made to the Regulations under the PCT.

OMB Number: 0651-0021.

Title: Patent Cooperation Treaty.

Form Numbers: PCT/RO/101, ANNEX/134/144, PTO-1382, PCT/IPEA/401, PCT/IB/328.

Type of Review: Approved through December of 2003.

Affected Public: Individuals or Households, Business or Other For-Profit, Federal Agencies or Employees, Not-for-Profit Institutions, Small Businesses or Organizations.

Estimated Number of Respondents: 439,554.

Estimated Time Per Response: 0.25 to 4.0 hrs.

Estimated Total Annual Burden Hours: 595,060 hours.

Needs and Uses: The information collected is required by the Patent Cooperation Treaty. The general purpose of the PCT is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Charles Pearson, Director, Office of PCT Legal Administration, United States Patent and Trademark Office, Washington, DC 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building,

725 17th Street, NW., Room 10235, Washington, DC 20503, Attention: Desk Officer for the United States 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 record keeping 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 1.434 is amended by revising paragraph (d) to read as follows:

§ 1.434 The request.

* * * * *

(d) International applications which designate the United States of America:

(1) Shall include the name, address and signature of the inventor, except as provided by §§ 1.421(d), 1.422, 1.423 and 1.425;

(2) Shall include a reference to any copending national application or international application designating the United States of America, if the benefit of the filing date for the prior copending application is to be claimed; and

(3) May include in the Request a declaration of the inventors as provided for in PCT Rule 4.17(iv).

3. Section 1.451 is amended by revising paragraph (b) to read as follows:

§ 1.451 The priority claim and the priority document in an international application.

* * * * *

(b) Whenever the priority of an earlier United States national application or international application filed with the United States Receiving Office is claimed in an international application, the applicant may request in the Request or in a letter of transmittal accompanying the international application upon filing with the United States Receiving Office or in a separate letter filed in the United States

Receiving Office not later than 16 months after the priority date, that the United States Patent and Trademark Office prepare a certified copy of the prior application for transmittal to the International Bureau (PCT Article 8 and PCT Rule 17). The fee for preparing a certified copy is set forth in § 1.19(b)(1).

* * * * *

4. Section 1.471 is amended by adding paragraph (c) to read as follows:

§ 1.471 Corrections and amendments during international processing.

* * * * *

(c) Corrections or additions to the Request of any declarations under PCT Rule 4.17 should be submitted to the International Bureau as prescribed by PCT Rule 26ter.

5. Section 1.484 is amended by adding paragraph (g) to read as follows:

§ 1.484 Conduct of international preliminary examination

* * * * *

(g) If the application whose priority is claimed in the international application is in a language other than English, the United States International Preliminary Examining Authority may, where the validity of the priority claim is relevant for the formulation of the opinion referred to in Article 33(1), invite the applicant to furnish an English translation of the priority document within two months from the date of the invitation. If the translation is not furnished within that time limit, the international preliminary examination report may be established as if the priority had not been claimed.

6. Section 1.494 is amended by revising paragraph (c)(2) to read as follows:

§ 1.494 Entering the national stage in the United States of America as a designated office.

* * * * *

(c) * * *

(2) The oath or declaration of the inventor (35 U.S.C. 371(c)(4); see § 1.497), and a declaration of inventorship in compliance with § 1.497 has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26ter.1, applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application.

* * * * *

7. Section 1.495 is amended by revising paragraph (c)(2) to read as follows:

§ 1.495 Entering the national stage in the United States of America as an elected office.

* * * * *

(c) * * *

(2) The oath or declaration of the inventor (35 U.S.C. 371(c)(4); see § 1.497), and a declaration of inventorship in compliance with § 1.497 has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26ter.1, applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application.

* * * * *

8. Section 1.497 is amended by revising paragraphs (a), (c) and (d), and adding paragraphs (f) and (g) to read as follows:

§ 1.497 Oath or declaration under 35 U.S.C. 371(c)(4).

(a) When an applicant of an international application desires to enter the national stage under 35 U.S.C. 371 pursuant to §§ 1.494 or 1.495, and a declaration in compliance with this section has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26ter.1, he or she must file an oath or declaration that:

(1) Is executed in accordance with either 1.66 or 1.68;

(2) Identifies the application to which it is directed;

(3) Identifies each inventor and the country of citizenship of each inventor; and

(4) States that the person making the oath or declaration believes the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought.

* * * * *

(c) Subject to paragraph (f) of this section, if the oath or declaration meets the requirements of paragraphs (a) and (b) of this section, the oath or declaration will be accepted as complying with 35 U.S.C. 371(c)(4) and §§ 1.494(c) or 1.495(c). However, if the oath or declaration does not also meet the requirements of § 1.63, a supplemental oath or declaration in compliance with § 1.63 or an application data sheet will be required in accordance with § 1.67.

(d) If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set

forth in the international application, or a change to the inventive entity has been effected under PCT Rule 92*bis* subsequent to the execution of any declaration which was filed under PCT Rule 4.17(iv), the oath or declaration must be accompanied by:

(1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part;

(2) The processing fee set forth in § 1.17(i); and

(3) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

* * * * *

(f) A new oath or declaration in accordance with this section must be filed to satisfy 35 U.S.C. 371(c)(4) if the declaration was filed under PCT Rule 4.17(iv), and:

(1) There was a change in the international filing date pursuant to PCT Rule 20.2 after the declaration was executed; or

(2) A change in the inventive entity was effected under PCT Rule 92*bis* after the declaration was executed.

(g) If a priority claim has been corrected or added pursuant to PCT Rule 26*bis* during the international stage after the declaration of inventorship was executed in the international application under PCT Rule 4.17(iv), applicant will be required to submit either a new oath or declaration or an application data sheet as set forth in § 1.76 correctly identifying the application upon which priority is claimed.

Dated: March 16, 2001.

Nicholas P. Godici,

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

[FR Doc. 01-7132 Filed 3-21-01; 8:45 am]

BILLING CODE 3510-16-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-6955-8]

RIN 2060-AF29

National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: We are taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Ferroalloys Production: Ferromanganese and Silicomanganese. The amendments are being made in response to a petition for reconsideration submitted to the EPA following promulgation of the rule and a petition for review filed in the U.S. Court of Appeals for the District of Columbia Circuit. The amendments establish new emission limitations for ferromanganese and silicomanganese production in open submerged arc furnaces. We are establishing four subcategories within this category of furnaces and specifying numerical emission limitations for particulate matter (PM) for each to account for differences in emission potential and control, furnace size, operating conditions, and alloy type. We are making these amendments as a direct final rule because we view the amendments as noncontroversial and anticipate no adverse comments.

In accordance with our general practice, we are also proposing these amendments in the "Proposed Rules" section of this **Federal Register**. If no adverse comments are received in response to this direct final rule, no further action is contemplated with respect to the proposal. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. If adverse comment is received only on a discrete portion of the rule, we will consider withdrawing only that portion of the rule. We will not institute a second comment period on the proposal. Any parties interested in commenting on the amendments should do so at this time.

DATES: This rule is effective on May 21, 2001 without further notice, unless EPA receives adverse comment by April 23, 2001. If we receive such comment, we will publish a timely withdrawal in the

Federal Register informing the public that this rule will not take effect.

Judicial Review. Under Clean Air Act (CAA) section 307(b), judicial review of this nationally applicable final action is available only by filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by May 21, 2001. Under section 307(b)(2), the regulations that are the subject of this action may not be challenged later in civil or criminal proceedings brought by EPA in reliance on them.

ADDRESSES: *Docket.* All information we considered in developing these amendments is located in Docket No. A-92-59 at the Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor), and may be inspected from 8:00 a.m. to 5:30 p.m., Monday through Friday. Materials related to these amendments are available upon request from the Air and Radiation Docket and Information Center by calling (202) 260-7548 or 7549. A reasonable fee may be charged for copying docket materials.

Comments. By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-92-59, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-92-59, U.S. EPA, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Conrad Chin, Metals Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541-1512; facsimile (919) 541-5600, electronic mail address: chin.conrad@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities. This action regulates entities that are industrial facilities producing ferromanganese or silicomanganese. Regulated categories and entities include those sources listed in the Primary Standard Industrial Classification Code 3313, Electrometallurgical Products, Except Steel.