

the AUSTAL, USA shipbuilding facility in Mobile, Alabama. The first ship launch occurred in late April 2008. Until the final rule goes into effect, the Mobile District has imposed a temporary restricted area pursuant to the procedures at 33 CFR 334.3(c). The temporary restricted area will be identified by marker buoys.

In response to a request by the United States Navy, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3), the Corps is proposing to amend the regulations in 33 CFR Part 334 by establishing a new restricted area.

Procedural Requirements

a. *Review Under Executive Order 12866.* This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that the economic impact of the proposed restricted area would have practically no impact on the public, any anticipated navigational hazard or interference with existing waterway traffic. This proposed rule, if adopted, will have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* The Corps expects that the proposed rule will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. After it is prepared, it may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT**, above.

d. *Unfunded Mandates Act.* The proposed rule does not impose an enforceable duty among the private sector and, therefore, are not a Federal private sector mandate and are not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48,

2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.782 to read as follows:

§ 334.782 AUSTAL, USA/SUPSHIP Bath Detachment Mobile, Alabama; naval restricted area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, contiguous to the area identified as AUSTAL, USA and the mean high water level within a rectangular shaped area on the east side of the Mobile River beginning at latitude 30°41'36.46", longitude –88°2'2.70"; thence westerly to latitude 30°41'35.85", longitude –88°2'5.12"; thence southerly to latitude 30°41'26.67", longitude –88°2'3.62"; thence easterly to latitude 30°41'26.98", longitude –88°2'1.81"; thence northerly along the easterly shoreline to the point of origin.

(b) *The regulations.* (1) All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and local or state law enforcement vessels, are prohibited from entering the restricted area without permission from the Supervisor of Shipbuilding, Conversion and Repair, USN, Bath, Maine or his/her authorized representative.

(2) The restricted area is in effect twenty-four hours per day and seven days a week (24/7).

(c) *Enforcement.* The regulation in this section shall be enforced by the Supervisor of Shipbuilding, Conversion and Repair, USN, Bath, Maine and/or such agencies or persons as he/she may designate.

Dated: June 4, 2008.

Michael G. Ensich,
Chief, Operations, Directorate of Civil Works.
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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. PTO–T–2008–0021]

RIN 0651–AC26

Changes in Requirements for Signature of Documents, Recognition of Representatives, and Establishing and Changing the Correspondence Address in Trademark Cases

AGENCY: United States Patent and Trademark Office, Commerce.

ACTIONS: Proposed rule.

SUMMARY: The United States Patent and Trademark Office (“Office”) proposes to revise the Trademark Rules of Practice to set forth the requirements for signature of documents filed in the Office, recognition of representatives, and establishing and changing the correspondence address in trademark cases.

DATES: Comments must be received by August 11, 2008 to ensure consideration.

ADDRESSES: The Office prefers that comments be submitted via electronic mail message to TMSignature@uspto.gov. Written comments may also be submitted by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451, attention Mary Hannon; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building—East Wing, 600 Dulany Street, Alexandria, Virginia, attention Mary Hannon; or by electronic mail message via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (<http://www.regulations.gov>) for additional instructions on providing comments via the Federal eRulemaking Portal. The comments will be available for public inspection on the Office’s Web site at <http://www.uspto.gov>, and will also be available at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia.

SUPPLEMENTARY INFORMATION: The Office proposes to revise the Trademark Rules of Practice (37 CFR Part 2) to set forth the requirements for signature of documents filed in the Office, recognition of representatives, and establishing and changing the correspondence address in trademark cases. The purpose of the rule is to codify and clarify current practice.

References below to “the Act,” “the Trademark Act,” or “the statute” refer to

the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, as amended. References to “TMEP” or “*Trademark Manual of Examining Procedure*” refer to the 5th edition, September 2007. References to a “party to a proceeding” refer to a party to a proceeding before the Trademark Trial and Appeal Board, e.g., an opposer, cancellation petitioner, or a party to an interference or concurrent use proceeding.

Overview of Current Practice

Persons Authorized To Represent Others

Under 37 CFR 10.14, only the following individuals may represent an applicant, registrant, or party to a proceeding before the Office in a trademark case:

- An attorney as defined in § 10.1(c), *i.e.*, an attorney who is a member in good standing of the bar of the highest court of a state in the United States;
- A Canadian patent agent who is registered and in good standing as a patent agent under § 11.6(c) for the limited purpose of representing parties located in Canada;
- A Canadian attorney or agent who has been granted recognition by the Director of the Office of Enrollment and Discipline of the United States Patent and Trademark Office (“OED Director”) to represent parties located in Canada; or
- An individual who is not an attorney but was recognized to practice before the Office in trademark cases under this chapter prior to January 1, 1957.

See *Trademark Manual of Examining Procedure* (“TMEP”) Sections 602 and 602.06 *et seq.*

An individual who does not meet the requirements of § 10.14 cannot: Prepare documents to be filed in the Office; sign amendments, responses to Office actions, petitions to the Director under § 2.146, or letters of express abandonment; authorize examiner’s amendments, priority actions, or changes of correspondence address; or otherwise represent an applicant, registrant, or party to a proceeding in the Office. 5 U.S.C. 500(d); 37 CFR 10.14(e); TMEP sections 602.03 and 605.02.

Recognition of Representative

To be recognized as a representative, a practitioner who meets the requirements of § 10.14 (“qualified practitioner”) may:

- File a power of attorney signed by the applicant, registrant, or party to a proceeding in a trademark case, or by someone with legal authority to bind the

applicant, registrant, or party (*e.g.*, a corporate officer or general partner of a partnership);

- Sign a document on behalf of an applicant, registrant, or party to a proceeding who is not already represented by a qualified practitioner from a different firm; or
- Appear in person on behalf of an applicant, registrant, or party to a proceeding who is not already represented by a qualified practitioner from a different firm.

37 CFR 2.17(c); TMEP sections 602.01 and 602.07.

Once the Office has recognized a qualified practitioner as the representative of an applicant or registrant, the Office will communicate and conduct business only with that practitioner, or with another qualified practitioner from the same firm. The Office will not conduct business directly with the applicant or registrant, or with another qualified practitioner from a different firm, unless the applicant or registrant files a new power of attorney or revocation of the previous power. TMEP sections 601.02, 602.07, and 603.02(a).

For purposes of recognition as a representative, the Office considers a power of attorney to end when the mark is registered, when ownership changes, or when the application is abandoned. TMEP section 602.01.

After a change in ownership has been recorded, if a new qualified practitioner appears on behalf of the new owner, the Office will communicate and conduct business with that practitioner even if no new power of attorney or revocation of the previous power is filed. On the other hand, if the previously recognized practitioner appears on behalf of the new owner (which might occur when the new owner is a related company), the Office will continue to conduct business and correspond with that practitioner.

Establishing the Correspondence Address for Application or Registration

Upon receipt of an application, the Office enters the correspondence address in accordance with the following guidelines:

- If the application is transmitted by a qualified practitioner, or includes a power of attorney designating a qualified practitioner, the Office will send correspondence to the practitioner.
- If an application is not being prosecuted by a qualified practitioner and the applicant has not designated a correspondence address, but a domestic representative has been appointed, the Office will send correspondence to the domestic representative.

- If an application is not being prosecuted by a qualified practitioner but the applicant designates in writing a correspondence address other than its own address, the Office will send correspondence to that address.

• If the application is not being prosecuted by a qualified practitioner, no domestic representative has been appointed, and the applicant has not designated a different address for correspondence, the Office will send correspondence directly to the applicant at its address of record.

37 CFR 2.18; TMEP section 603.01

The Office reestablishes the correspondence address in accordance with these same guidelines upon the examination of an affidavit of use or excusable nonuse under section 8 of the Trademark Act, affidavit or declaration of incontestability under section 15 of the Act, renewal application under section 9 of the Act, or request for amendment or correction of a registration under section 7 of the Act. TMEP section 603.02(c). Due to the length of time that elapses between registration and filings under sections 7, 8, 9, 15 and 71 of the Act (which can be 10 years or more), the Office will recognize a qualified practitioner who transmits such a filing even if there is no new power of attorney or revocation of a previous power.

Changing the Correspondence Address

Once the correspondence address is established as discussed above, the Office will send correspondence to that address unless there is a written request to change the address, signed by the practitioner who has been recognized by the Office, or by the applicant or registrant or someone with legal authority to bind the applicant or registrant (*e.g.*, a corporate officer or general partner of a partnership) if the applicant or registrant is not represented by a qualified practitioner. 37 CFR 2.18(b); TMEP sections 601.02, 602.07, and 603.02(a).

Once the Office has recognized a qualified practitioner as the representative of an applicant or registrant, only that practitioner, or another qualified practitioner from the same firm, can sign a request to change the address, unless the applicant or registrant files a new power of attorney or revocation of the previous power, or the recognized practitioner files a request to withdraw. TMEP sections 603.02(a) and 605.02.

If a qualified practitioner transmits documents on behalf of an applicant or registrant who is not already represented by another qualified practitioner from a different firm, the

Office will construe this as including a request to change the correspondence address to that of the practitioner. TMEP section 603.02(a).

Documents Must Be Properly Signed

Because an individual who is not authorized under § 10.14 cannot represent an applicant, registrant, or party to a proceeding before the Office, the Office will not act on documents that are not properly signed. TMEP sections 602.03 and 605.02. When it is unclear whether a response to an Office action is signed by a proper person, the Office will notify the applicant or registrant that the response is incomplete. See TMEP sections 605.05(a) and 712.03 regarding notices of incomplete response. When it is unclear whether a document other than a response to an Office action is signed by a proper person, the Office will notify the applicant or registrant that no action will be taken on the document, unless the applicant or registrant either establishes the signatory's authority or submits a properly signed document. See TMEP section 605.05.

Unauthorized Practice

When the Office learns that a person who is not qualified under § 10.14 is acting as the representative of an applicant, registrant, or party to a proceeding, the Office will notify the affected applicant, registrant, or party that the individual is not entitled to practice before the Office in trademark matters, and therefore, may not represent the applicant, registrant, or party; that any power of attorney is void *ab initio*; that the individual may not sign responses to Office actions; and that all correspondence will be sent to the domestic representative if one has been designated, or alternatively, to the applicant, registrant, or party to a proceeding at its address of record. If the Office receives a response signed by such an unqualified person, the response will be treated as incomplete. This same practice is followed when the Office learns that a practitioner has been suspended or excluded from practice before the Office.

Discussion of Proposed Rules Changes

Where appropriate, the Office proposes to reword or reorganize the rules for clarity, and to add headings to make it easier to navigate through the rules.

The Office proposes to redesignate § 2.17(a) as § 2.17(b)(2).

The Office proposes to redesignate § 2.17(b) as § 2.17(f).

The Office proposes to redesignate § 2.17(c) as § 2.17(b), and to revise it to

provide that the Office will recognize a qualified practitioner who signs a document or appears in person in a trademark case only if the applicant, registrant, or party to a proceeding is not already represented by a qualified practitioner from a different firm. This is consistent with TMEP sections 602.01 and 602.07.

The Office proposes to set forth the requirements for powers of attorney in § 2.17(c). A power must: (1) Designate by name at least one practitioner who meets the requirements of 37 CFR 10.14; and (2) be signed by the individual applicant, registrant, or party to a proceeding pending before the Office, or by someone with legal authority to bind the applicant, registrant, or party (e.g., a corporate officer or general partner of a partnership). Once the applicant, registrant, or party to a proceeding has designated a qualified practitioner(s), that practitioner may sign an associate power of attorney appointing another qualified practitioner(s) as an additional person(s) authorized to represent the applicant, registrant, or party to a proceeding. This is consistent with TMEP sections 602.01 and 602.01(b).

The Office proposes to amend § 2.17(d) to add a provision that the owner of an application or registration may appoint an attorney through TEAS for up to 20 applications or registrations that have the identical owner and attorney. This is consistent with TMEP section 602.01(a).

The Office proposes to add § 2.17(e) to set forth the circumstances under which a Canadian attorney or agent may represent parties located in Canada. A Canadian patent agent who is registered with the Office and in good standing as a patent agent under § 11.6(c) may represent parties located in Canada before the Office in trademark matters. A Canadian attorney or agent who is registered or in good standing with the Canadian Intellectual Property Office, but not registered as a patent agent under § 11.6(c), may represent parties located in Canada if he or she has been authorized to do so by the OED Director. Before undertaking to represent an applicant, registrant, or party before the Office, and before filing a paper with the Office, a Canadian attorney or agent who is not registered with the Office and in good standing as a patent agent under § 11.6(c) must both file a request for and be granted recognition to practice before the Office in trademark cases. The request for recognition must be filed with OED. The request must be granted by the OED Director before representation is undertaken and before any application or other document is filed in the Office. The request for

recognition must include proof that he/she satisfies the requirements of 35 U.S.C. 32 and 37 CFR § 10.14(c). This is consistent with TMEP section 602.06(a). The Office has separately proposed to replace 37 CFR 10.14(c) with 37 CFR 11.14(c) and add 37 CFR 11.14(f). Under 37 CFR 11.14(c), a Canadian attorney or agent will be required to file a written application for reciprocal recognition under 37 CFR 11.14(f), provide evidence satisfying § 11.14(c), and pay an application fee that will be required by 37 CFR 1.21(a)(1)(i).

Once recognized by OED, the Canadian attorney or agent can only represent parties who are located in Canada. He or she cannot represent Canadian nationals who are not located in Canada. Thus, a Canadian attorney or agent could not represent a Canadian national who resides in California and has access to a mailing address in Canada.

The Office proposes to add § 2.17(g)(1), to provide that the Office considers a power of attorney to end with respect to a pending application when the mark is registered, when ownership changes, or when the application is abandoned. This is consistent with TMEP section 602.01.

The Office proposes to add § 2.17(g)(2), to provide that the Office considers a power of attorney filed after registration to end when the mark is cancelled or expired, or when ownership changes. If the power was filed in connection with an affidavit of use or excusable nonuse under section 8 or 71 of the Trademark Act, affidavit or declaration of incontestability under section 15 of the Act, renewal application under section 9 of the Act, or request for amendment or correction under section 7 of the Act, the power is deemed to end upon acceptance or final rejection of the filing.

Current § 2.18 sets forth the procedures for establishing the correspondence address. The Office proposes to revise and reorganize § 2.18 to clarify the procedures for establishing and changing a correspondence address.

Proposed § 2.18(a)(2) provides that if a qualified practitioner transmits a document(s) on behalf of an applicant, registrant, or party to a proceeding in a trademark case, the Office will send correspondence to the practitioner transmitting the documents only if the applicant, registrant, or party to a proceeding is not already represented by another qualified practitioner. This is consistent with TMEP sections 602.07, 603.01, and 603.02(a).

Proposed § 2.18(a)(6) provides that the Office will send correspondence to only

one address. This is consistent with current § 2.18(b).

Proposed § 2.18(a)(7) provides that once the Office has recognized a qualified practitioner as the representative of an applicant, registrant, or party to a proceeding, the Office will communicate and conduct business only with that practitioner, or with another qualified practitioner from the same firm. The Office will not conduct business directly with the applicant, registrant, or party to a proceeding, or with another qualified practitioner from a different firm, unless the applicant, registrant, or party to a proceeding files a revocation of the power of attorney under § 2.19(a), and/or a new power of attorney that meets the requirements of § 2.17(c). The proposed rule further provides that a written request to change the correspondence address does not revoke a power of attorney. This is consistent with TMEP sections 601.02, 602.07, and 603.02(a).

Proposed § 2.18(b)(1) provides that when a physical or e-mail correspondence address changes, the applicant, registrant, or party to a proceeding must file a written request to change the correspondence address. The request should be promptly filed. This is consistent with TMEP section 603.03.

Proposed § 2.18(b)(2) provides that a request to change the correspondence address must be made in writing, signed by the applicant, registrant, or party to a proceeding, someone with legal authority to bind the applicant, registrant, or party (e.g., a corporate officer or general partner of a partnership), or a qualified practitioner, in accordance with § 2.193(e)(2). This is consistent with current § 2.18(b) and TMEP sections 603.02 and 603.02(a).

Proposed § 2.18(b)(3) provides that if an applicant or registrant files a new power of attorney that meets the requirements of § 2.17(c), the Office will change the correspondence address to that of the practitioner named in the power.

Proposed § 2.18(b)(4) provides that if a qualified practitioner transmits a document(s) on behalf of an applicant, registrant, or party to a proceeding who is not already represented by another qualified practitioner, the Office will construe this as including a request to change the correspondence address to that of the practitioner, and will send correspondence to the practitioner. This is consistent with TMEP section 603.02(a).

The Office proposes to add § 2.18(c)(1), to provide that even if there is no new power of attorney or written request to change the correspondence

address, the Office will change the correspondence address upon the examination of an affidavit of use or excusable nonuse under section 8 or 71 of the Trademark Act, affidavit or declaration of incontestability under section 15 of the Act, renewal application under section 9 of the Act, or request for amendment or correction under section 7 of the Act. This is consistent with TMEP section 603.02(c). Due to the length of time that elapses between filings under sections 7, 8, 9, 15 and 71 of the Act (which can be 10 years or more), the Office automatically enters a new correspondence address upon examination of each filing.

The Office proposes to add § 2.18(c)(2), to provide that once the Office establishes a correspondence address upon examination of an affidavit, renewal application or section 7 request, a written request to change the address is required to change the address during the pendency of that filing.

Example 1: Attorney A transmits an affidavit of use under section 8, and the examiner issues an Office action in connection with the affidavit. If another attorney from a different firm (Attorney B) wants to file a response to the Office action, Attorney B must file a new power of attorney and/or revocation of the previous power, signed by the owner of the registration or someone with legal authority to bind the owner, before the Office will act on the response and send correspondence to Attorney B.

Example 2: Attorney A transmits an affidavit of use under section 8, and the Office accepts the affidavit. If another attorney from a different firm (Attorney B) later files a request for amendment under section 7, the Office will recognize and correspond with Attorney B regardless of whether a new power of attorney or revocation of the previous power is filed.

Example 3: Attorney A transmits an affidavit of use under section 8, and the examiner issues an Office action in connection with the affidavit. If another attorney from a different firm (Attorney B) wants to file a request for amendment under section 7 before the Office accepts or issues a final rejection of the section 8 affidavit, Attorney B must file a new power of attorney and/or revocation of the previous power, signed by the owner of the registration or someone with legal authority to bind the owner, before the Office will act on the section 7 request and send correspondence to Attorney B.

The Office proposes to revise § 2.19(a) to clarify the requirements for revocation of a power of attorney. Proposed § 2.19(a)(1) provides that a request to revoke a power of attorney must be signed by the applicant, registrant, or party to a proceeding, or by someone with legal authority to bind

the applicant, registrant, or party. This is consistent with TMEP section 602.04.

The Office proposes to add § 2.19(a)(3), stating that a request to change the correspondence address does not revoke a power of attorney.

The Office proposes to add § 2.19(a)(4), stating that a new power of attorney that meets the requirements of § 2.17(c) will be treated as a revocation of the previous power.

The Office proposes to remove the provision in the current § 2.19(a) that the Office will notify the affected person of the revocation of his or her authorization. The Office no longer issues such notices. Anyone who wants to know whether the revocation of a power of attorney has been entered can check the TARR database on the Office's Web site at <http://tarr.uspto.gov>.

The Office proposes to revise § 2.19(b) to set forth the requirements for filing a request to withdraw as attorney. This is consistent with TMEP section 602.05. The request should be filed soon after the practitioner notifies the client of his/her intent to withdraw, and must include the application serial number, registration number, or proceeding number; a statement of the reason(s) for the request to withdraw; and either (1) a statement that the practitioner has given due notice to the client that the practitioner is withdrawing from employment and will be filing the necessary documents with the Office; that the client was given notice of the withdrawal at least two months before the expiration of the response period, if applicable; that the practitioner has delivered to the client all documents and property in the practitioner's file concerning the application or registration to which the client is entitled; and that the practitioner has notified the client of any responses that may be due, and of the deadline for response; or (2) if there is more than one attorney of record, a statement that representation by co-counsel is ongoing.

The Office proposes to amend § 2.22(a)(11) to change a cross-reference.

The Office proposes to amend § 2.23(a)(2), which requires that a TEAS Plus applicant continue to receive communications from the Office by electronic mail during the pendency of the application, to add a requirement that a TEAS Plus applicant maintain a valid e-mail correspondence address in order to maintain TEAS Plus status. If the e-mail address changes, the applicant must notify the Office of the change.

The Office proposes to redesignate § 2.24 as § 2.24(a), and amend it to provide that if an applicant is not domiciled in the United States, the

applicant may designate the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark by: (1) Setting forth the name of the domestic representative in the initial application, or (2) filing a separate designation signed by the applicant, someone with legal authority to bind the applicant (e.g., a corporate officer or general partner of a partnership), or a qualified practitioner.

Where the designation of domestic representative is set forth in the initial application, the designation may be signed by a person authorized to sign the application on behalf of applicant, pursuant to proposed § 2.193(e)(1). The Office does not question the authority of the signatory, unless there is an inconsistency in the record as to the signatory's authority to sign. TMEP section 804.04.

The Office proposes to add new § 2.24(b), to provide that a request to change or revoke a designation of domestic representative must be signed by the applicant, someone with legal authority to bind the applicant, or a qualified practitioner.

The Office proposes to amend § 2.33(a) to remove the definition of "person properly authorized to sign" a verification on behalf of applicant, and replace it with a cross-reference to proposed § 2.193(e)(1). The substance of this definition is unchanged.

The Office proposes to remove § 2.33(d), which provided for signature of verifications in applications filed through TEAS, because it is unnecessary. The procedure for signing a TEAS document is set forth in proposed § 2.193(c). This procedure is unchanged.

The Office proposes to amend § 2.62 and its heading to add a requirement that a response to an Office action be signed by the applicant, someone with legal authority to bind the applicant, or a qualified practitioner, in accordance with the requirements of proposed § 2.193(e)(2). This includes responses to suspension inquiries or letters of suspension. This is consistent with TMEP section 712.01.

The Office proposes to amend § 2.64(b) to add a requirement that a request for reconsideration of a final action be signed by the applicant, someone with legal authority to bind the applicant, or a qualified practitioner, in accordance with the requirements of proposed § 2.193(e)(2). This is consistent with current practice.

The Office proposes to amend § 2.68 to add a requirement that a request for express abandonment of an application be signed by the applicant, someone

with legal authority to bind the applicant, or a qualified practitioner, in accordance with the requirements of proposed § 2.193(e)(2). This is consistent with TMEP section 718.01.

The Office proposes to revise § 2.74 to add a new paragraph (c), requiring that such an amendment be signed by the applicant, someone with legal authority to bind the applicant, or a qualified practitioner, in accordance with the requirements of proposed § 2.193(e)(2). This is consistent with TMEP section 605.02.

The Office proposes to amend § 2.76(b)(1) to change a cross-reference.

The Office proposes to amend § 2.87(d) to add a provision that a request to divide be signed by the applicant, someone with legal authority to bind the applicant (e.g., a corporate officer or general partner of a partnership), or a qualified practitioner, in accordance with the requirements of proposed § 2.193(e)(2). This is consistent with TMEP section 1110.

The Office proposes to amend § 2.88(b)(1) to change a cross-reference.

The Office proposes to amend §§ 2.89(a)(3) and (b)(3) to change cross-references.

The Office proposes to amend § 2.146(c) to add a provision that a petition to the Director be signed by the petitioner, someone with legal authority to bind the petitioner, or a qualified practitioner, in accordance with the requirements of proposed § 2.193(e)(2). This is consistent with TMEP section 1705.07. The proposed rule further provides that when facts are to be proved on petition, the petitioner must submit proof in the form of affidavits or declarations in accordance with § 2.20, signed by someone with firsthand knowledge of the facts to be proved. TMEP section 1705.03.

The Office proposes to amend § 2.161(b) to remove the definition of "person properly authorized to sign" an affidavit or declaration of use or excusable nonuse under section 8 of the Trademark Act ("section 8 affidavit") and replace it with a cross-reference to proposed § 2.193(e)(1). The substance of this definition is unchanged.

The Office proposes to amend § 2.163(b) to add a provision that a response to an Office action issued in connection with a section 8 affidavit be signed by the owner, someone with legal authority to bind the owner, or a qualified practitioner, in accordance with the requirements of proposed § 2.193(e)(2). This is consistent with TMEP section 1604.16.

The Office proposes to amend § 2.167 to add a provision that an affidavit or declaration of incontestability under

section 15 of the Trademark Act be filed in the name of the owner of the registration, and verified by the owner or a person properly authorized to sign on behalf of the owner under proposed § 2.193(e)(1). This is consistent with TMEP section 1605.04.

The Office proposes to amend § 2.171(a) to add a provision that a request for a new certificate of registration upon change of ownership be signed by the owner of the registration, someone with legal authority to bind the owner, or a qualified practitioner.

The Office proposes to remove the requirement in § 2.171(a) that the original certificate of registration be included with a request for a new certificate of registration upon change of ownership. This is consistent with current practice, and with Office practice in connection with requests to amend or correct registrations under section 7 of the Trademark Act. *See* notice at 69 FR 51362 (Aug. 29, 2004), removing the requirement that the original certificate be included with a section 7 request.

The Office proposes to amend § 2.171(b) to add a provision that a request to divide a registration upon change of ownership with respect to some but not all of the goods/services be signed by the owner of the registration, someone with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership), or a qualified practitioner. This is consistent with current practice.

The Office proposes to amend § 2.172 to add a provision that a request for surrender of a registration be filed in the name of the owner of the registration, and signed by the owner, a person with legal authority to bind the owner, or a qualified practitioner. This is consistent with current practice.

The Office proposes to amend §§ 2.173(a) and 2.175(b)(2) to add a provision that a request to amend a registration or to correct the owner's error in a registration be filed by the owner and signed by the owner, someone with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership), or a qualified practitioner. The requirement for filing in the name of the owner is consistent with current practice. However, the requirement for signature by someone with legal authority to bind the owner or a qualified practitioner changes current practice slightly. TMEP sections 1609.01(b) and 1609.10(b) now permit signature by a person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the owner, which could

include someone without legal authority to bind the owner. The Office believes that the better practice would be to require that requests to amend or correct a registration be signed by someone with legal authority to bind the owner or by a qualified practitioner.

The Office proposes to amend § 2.184(b) to add a provision that a response to an Office action issued in connection with a renewal application be signed by the registrant, someone with legal authority to bind the registrant (e.g., a corporate officer or general partner of a partnership), or a qualified practitioner, in accordance with the requirements of proposed § 2.193(e)(2). This is consistent with TMEP section 1606.12.

The Office proposes to redesignate § 2.193(a) as § 2.193(g).

The Office proposes to redesignate § 2.193(b) as § 2.193(h).

The Office proposes to move and reorganize the current § 2.193(c)(1) in proposed §§ 2.193 (a), (b) and (c).

Proposed § 2.193(a) provides that each piece of correspondence that requires a signature must bear: (1) A handwritten signature personally signed in permanent ink by the person named as the signatory, or a true copy thereof; or (2) an electronic signature that meets the requirements of paragraph (c). The proposed rule makes it clear that a handwritten signature must be personally signed by the person named as the signatory, and an electronic signature must be personally entered by the person named as the signatory.

Proposed § 2.193(a)(2) provides that the Office will accept a signature that meets the requirements of paragraph (c) on all correspondence, whether filed on paper, by facsimile transmission, or through TEAS or ESTTA. This is consistent with TMEP section 804.05.

Proposed § 2.193(c) sets forth the requirements for signing a document electronically, previously set forth in § 2.193(c)(1)(iii).

The Office proposes to redesignate § 2.193(c)(2) as § 2.193(f).

The Office proposes to add new § 2.193(d), to require that the name of the person who signs a document in connection with a trademark application or registration must be set forth in printed or typed form immediately below or adjacent to the signature, or identified elsewhere in the filing (e.g., in a cover letter or other document that accompanies the filing).

The Office proposes to redesignate § 2.193(d) as § 2.193(i).

The Office proposes to add new § 2.193(e), setting forth the proper person to sign various types of documents that are commonly filed in

connection with trademark applications and registrations.

Proposed § 2.193(e)(1) sets forth the definition of a person who is properly authorized to sign a verification in support of an application for registration, amendment to an application for registration, allegation of use under § 2.76 or § 2.78, request for extension of time to file a statement of use under § 2.89, or an affidavit under section 8, 15 or 71 of the Trademark Act. This is consistent with current §§ 2.33(a) and 2.161(b).

Proposed § 2.193(e)(2) provides that the applicant or registrant, someone with legal authority to bind the applicant or registrant (e.g., a corporate officer or general partner of a partnership), or a qualified practitioner must sign responses to Office actions, amendments to applications, requests for reconsideration of final actions, requests for express abandonment, requests to divide, notices of change of address, and petitions under § 2.146. This is consistent with proposed §§ 2.62(b), 2.64(b), 2.68(a), 2.74(c), 2.87(d), 2.146(c), 2.163(b), and 2.184(b), discussed above.

Proposed § 2.193(e)(2)(i) provides that if the applicant or registrant is represented by a qualified practitioner, the practitioner must sign, except where correspondence is required to be signed by the applicant or registrant. This is consistent with current § 10.18(a). This applies to both in-house and outside counsel.

Proposed § 2.193(e)(2)(ii) provides that if the applicant or registrant is not represented by a qualified practitioner, the individual applicant or registrant, or someone with legal authority to bind the applicant or registrant (e.g., a corporate officer or general partner of a partnership) must sign. In the case of joint applicants or joint registrants who are not represented by a qualified practitioner, all must sign. This is consistent with TMEP sections 605.02, 712.01 and 712.01(a)(i).

Proposed § 2.193(e)(3) provides that the individual applicant or registrant or someone with legal authority to bind the applicant or registrant (e.g., a corporate officer or general partner of a partnership) must sign powers of attorney and revocations of powers of attorney; that in the case of joint applicants or joint registrants, all must sign; that once the applicant or registrant has designated a qualified practitioner(s), the named practitioner may sign an associate power of attorney appointing another qualified practitioner(s) as an additional person(s) authorized to prosecute the application or registration; and that if the applicant

or registrant revokes the original power of attorney, this revocation also discharges any associate power signed by the practitioner whose power has been revoked. This is consistent with proposed §§ 2.17(c) and 2.19(a), discussed above.

Proposed § 2.193(e)(4) provides that someone with firsthand knowledge of the facts regarding unintentional delay must sign a petition to revive under § 2.66. This is consistent with current §§ 2.66(b)(2) and (c)(2).

Proposed § 2.193(e)(5) provides that the registrant or the registrant's representative must sign a renewal application. This is consistent with current § 2.183(a).

Proposed § 2.193(e)(6) provides that the owner of the registration, someone with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership), or a qualified practitioner must sign a request for correction, amendment or surrender of a registration; and that in the case of joint owners who are not represented by a practitioner authorized to practice before the Office under 37 CFR 10.14, all must sign. This is consistent with proposed §§ 2.172, 2.173(a) and 2.175(b)(2).

Proposed § 2.193(e)(7) provides that a designation or revocation of a domestic representative must be signed by applicant or registrant, someone with legal authority to bind the applicant or registrant (e.g., a corporate officer or general partner of a partnership), or a qualified practitioner.

Proposed § 2.193(e)(8) provides that a person transmitting documents to the Office may sign a cover letter or transmittal letter; and that the Office neither requires cover letters nor questions the authority of a person who signs a communication that merely transmits documents. This is consistent with TMEP section 605.03.

Rule Making Requirements

Executive Order 12866: This rule has been determined not to be significant for purposes of Executive Order 12866.

Administrative Procedure Act: This rule merely involves rules of agency practice and procedure within the meaning of 5 U.S.C. 553(b)(A). Therefore, this rule 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). However, the Office has chosen to seek public comment before implementing the rule.

Regulatory Flexibility Act: The Deputy General Counsel for General Law of the United States Patent and Trademark

Office hereby certifies to the Chief Counsel for Advocacy of the Small Business Administration that this notice of proposed rule making, Changes in Requirements for Signature of Documents, Recognition of Representatives, and Establishing and Changing the Correspondence Address in Trademark Cases (RIN 0651-AC26), will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)).

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. See 5 U.S.C. 603.

The proposed rules clarify certain requirements for signature of documents filed in the Office, recognition of representatives, and establishing and changing the correspondence address in trademark cases. In large part, the proposed rule changes are intended to codify existing practice. Although the proposed rules may affect trademark applicants or registrants, because they codify the existing practice of the Office, the changes proposed in this notice will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates: The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, and tribal governments or the private sector.

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

Paperwork Reduction Act: This proposed rule involves information collection requirements which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information in this proposed rule have been reviewed and previously approved by the OMB under OMB control numbers: 0651-0054, 0651-0027 and 0651-0040.

The United States Patent and Trademark Office is not resubmitting an information collection package to OMB for its review and approval because the

changes in this proposed rule would not affect the information collection requirements associated with the information collections under OMB control numbers 0651-0054, 0651-0027 and 0651-0040. The changes in this notice are limited to amending the rules of practice to codify current practice with respect to the proper party to sign various documents and current procedures for appointment, revocation or withdrawal of attorneys and domestic representatives.

Interested persons are requested to send comments regarding these information collections, including suggestions for reduction of this burden to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Officer for the Patent and Trademark Office; and (2) Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 (*Attn:* Mary Hannon).

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 2

Administrative practice and procedure, Trademarks.

For the reasons given in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the Office proposes to amend part 2 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

2. Revise § 2.17 to read as follows:

§ 2.17 Recognition for representation.

(a) *Authority to practice in trademark cases.* Only an individual who meets the requirements of § 10.14 of this chapter may represent an applicant, registrant, or party to a proceeding before the Office in a trademark case.

(b)(1) *Recognition of practitioner as representative.* To be recognized as a representative in a trademark case, a practitioner qualified under § 10.14 of this chapter may:

(i) File a power of attorney that meets the requirements of paragraph (c) of this section;

(ii) Sign a document on behalf of an applicant, registrant, or party to a proceeding who is not already represented by a practitioner qualified under § 10.14 of this chapter from a different firm; or

(iii) Appear in person on behalf of an applicant, registrant, or party to a proceeding who is not already represented by a practitioner qualified under § 10.14 of this chapter from a different firm.

(2) *Signature as certificate of authorization to represent.* When a practitioner qualified under § 10.14 of this chapter appears in person or signs a document pursuant to paragraph (b) of this section, his or her personal appearance or signature shall constitute a representation to the Office that he or she is authorized to represent the person or entity on whose behalf he or she acts. The Office may require further proof of authority to act in a representative capacity.

(c) *Requirements for power of attorney.* A power of attorney must:

(1) Designate by name at least one practitioner meeting the requirements of § 10.14 of this chapter; and

(2) Be signed by the individual applicant, registrant, or party to a proceeding pending before the Office, or by someone with legal authority to bind the applicant, registrant, or party (e.g., a corporate officer or general partner of a partnership). Once the applicant, registrant, or party has designated a practitioner(s) who meets the requirements of § 10.14 of this chapter, that practitioner may sign an associate power of attorney appointing another qualified practitioner(s) as an additional person(s) authorized to represent the applicant, registrant, or party. If the applicant, registrant, or party revokes the original power of attorney (§ 2.19(a)), this revocation also discharges any associate power signed by the practitioner whose power has been revoked.

(d) *Power of attorney relating to multiple applications or registrations.*

(1) The owner of an application or registration may appoint a practitioner(s) who meets the requirements of § 10.14 of this chapter for up to twenty applications or registrations that have the identical owner and attorney through TEAS. The owner may not file a power of attorney relating to future applications through TEAS.

(2) The owner of an application or registration may file a power of attorney that relates to more than one trademark

application or registration, or to all existing and future applications and registrations of that owner, on paper. A person relying on such a power of attorney must:

(i) Include a copy of the previously filed power of attorney; or
 (ii) Refer to the power of attorney, specifying the filing date of the previously filed power of attorney; the application serial number (if known), registration number, or *inter partes* proceeding number for which the original power of attorney was filed; and the name of the person who signed the power of attorney; or, if the application serial number is not known, submit a copy of the application or a copy of the mark, and specify the filing date.

(e) *Canadian attorneys and agents.* (1) A Canadian patent agent who is registered and in good standing as a patent agent under § 11.6(c) may represent parties located in Canada before the Office in trademark matters.

(2) A Canadian attorney or agent who is registered or in good standing with the Canadian Intellectual Property Office, but not registered as a patent agent under § 11.6(c), may represent parties located in Canada if he or she has been authorized to do so by the Director of Enrollment and Discipline. See 37 CFR 11.14(c) and (f).

(f) *Non-lawyers.* A non-lawyer may not act as a representative except in the limited circumstances set forth in § 10.14(b) of this chapter. Before any non-lawyer who meets the requirements of § 10.14(b) of this chapter may take action of any kind with respect to an application, registration or proceeding, a written authorization must be filed, signed by the applicant, registrant, or party to the proceeding, or by someone with legal authority to bind the applicant, registrant, or party (e.g., a corporate officer or general partner of a partnership).

(g) *Duration of power of attorney.* (1) For purposes of recognition as a representative, the Office considers a power of attorney filed while an application is pending to end when the mark registers, when ownership changes, or when the application is abandoned.

(2) The Office considers a power of attorney filed after registration to end when the mark is cancelled or expired, or when ownership changes. If the power was filed in connection with an affidavit of use or excusable nonuse under section 8 or 71 of the Trademark Act, affidavit or declaration of incontestability under section 15 of the Act, renewal application under section 9 of the Act, or request for amendment or correction under section 7 of the Act,

the power is deemed to end upon acceptance or final rejection of the filing.

3. Revise § 2.18 to read as follows:

§ 2.18 Correspondence, with whom held.

(a) *Establishing the correspondence address.* (1) If a written power of attorney that meets the requirements of § 2.17 is filed, the Office will send correspondence to the practitioner designated in the power.

(2) If a practitioner qualified under § 10.14 of this chapter transmits a document(s) on behalf of an applicant, registrant, or party to a proceeding who is not already represented by another qualified practitioner from a different firm, the Office will send correspondence to the practitioner transmitting the documents.

(3) If an application, registration or proceeding is not being prosecuted by a practitioner qualified under § 10.14 of this chapter and the applicant, registrant, or party to the proceeding designates a correspondence address in writing, the Office will send the correspondence to the designated address.

(4) If an application, registration or proceeding is not being prosecuted by a practitioner qualified under § 10.14 of this chapter and the applicant, registrant, or party to the proceeding has not designated a correspondence address in writing, but a domestic representative has been appointed, the Office will send correspondence to the domestic representative.

(5) If the application, registration or proceeding is not being prosecuted by a practitioner qualified under § 10.14 of this chapter, the applicant, registrant, or party to the proceeding has not designated a correspondence address, and no domestic representative has been appointed, the Office will send correspondence directly to the applicant, registrant or party to the proceeding.

(6) The Office will send correspondence to only one address.

(7) Once the Office has recognized a practitioner qualified under § 10.14 of this chapter as the representative of an applicant, registrant, or party to a proceeding, the Office will communicate and conduct business only with that practitioner, or with another qualified practitioner from the same firm. The Office will not conduct business directly with the applicant, registrant, or party to the proceeding, or with another practitioner from a different firm, unless the applicant, registrant, or party to the proceeding files a revocation of the power of attorney under § 2.19(a), and/or a new

power of attorney that meets the requirements of § 2.17(c). A written request to change the correspondence address does not revoke a power of attorney.

(b) *Changing the correspondence address.* (1) If a physical or e-mail correspondence address changes, the applicant, registrant, or party to a proceeding must file a written request to change the correspondence address. The request should be promptly filed.

(2) A request to change the correspondence address must be made in writing, signed by the applicant, registrant, or party to a proceeding, someone with legal authority to bind the applicant, registrant, or party to the proceeding (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 10.14 of this chapter, in accordance with proposed § 2.193(e)(2).

(3) If an applicant or registrant files a new power of attorney that meets the requirements of § 2.17(c), the Office will change the correspondence address to that of the practitioner named in the power.

(4) If a practitioner qualified under § 10.14 of this chapter transmits a document(s) on behalf of an applicant, registrant, or party to a proceeding who is not already represented by another qualified practitioner, the Office will construe this as including a request to change the correspondence address to that of the practitioner, and will send correspondence to the practitioner.

(c) *Post registration filings under sections 7, 8, 9, 15, and 71.* (1) Even if there is no new power of attorney or written request to change the correspondence address, the Office will change the correspondence address upon the examination of an affidavit of use or excusable nonuse under section 8 or 71 of the Trademark Act, affidavit or declaration of incontestability under section 15 of the Act, renewal application under section 9 of the Act, or request for amendment or correction under section 7 of the Act. If a practitioner qualified under § 10.14 of this chapter transmits the affidavit, renewal application, or section 7 request, the Office will send correspondence to the practitioner. If the owner of the registration is not represented by a qualified practitioner, the Office will send correspondence directly to the owner, or to the domestic representative, in accordance with paragraph (a).

(2) Once the Office establishes a correspondence address upon examination of an affidavit, renewal application or section 7 request, a written request to change the address in

accordance with the requirements of paragraph (b)(2) of this section is required to change the address during the pendency of that filing.

4. Revise § 2.19 to read as follows:

§ 2.19 Revocation or withdrawal of attorney.

(a) *Revocation.* (1) Authority to represent an applicant, registrant or party to a proceeding before the Office may be revoked at any stage in the proceedings of a trademark case, upon written notification signed by the applicant, registrant, or party to the proceeding, or by someone with legal authority to bind the applicant, registrant, or party (e.g., a corporate officer or general partner of a partnership).

(2) When a power of attorney is revoked, the Office will communicate directly with the applicant, registrant, or party to the proceeding, or with the new attorney or domestic representative if one has been appointed.

(3) A request to change the correspondence address does not revoke a power of attorney.

(4) A new power of attorney that meets the requirements of § 2.17(c) will be treated as a revocation of the previous power.

(b) *Withdrawal of attorney.* If the requirements of § 10.40 of this chapter are met, a practitioner authorized to represent an applicant, registrant, or party to a proceeding in a trademark case may withdraw upon application to and approval by the Director. The practitioner should file the request to withdraw soon after the practitioner notifies the client of his/her intent to withdraw. The request must include the following:

(1) The application serial number, registration number, or proceeding number;

(2) A statement of the reason(s) for the request to withdraw; and

(3) Either (i) a statement that the practitioner has given notice to the client that the practitioner is withdrawing from employment and will be filing the necessary documents with the Office; that the client was given notice of the withdrawal at least two months before the expiration of the response period, if applicable; that the practitioner has delivered to the client all documents and property in the practitioner's file concerning the application, registration or proceeding to which the client is entitled; and that the practitioner has notified the client of any responses that may be due, and of the deadline for response; or

(ii) if more than one attorney is of record, a statement that representation by co-counsel is ongoing.

5. Revise § 2.22(a)(11) to read as follows:

§ 2.22 Filing requirements for a TEAS Plus application.

(a) * * *

(11) A verified statement that meets the requirements of § 2.33, dated and signed by a person properly authorized to sign on behalf of the applicant pursuant to § 2.193(e)(1);

* * * * *

6. Revise § 2.23(a)(2) to read as follows:

§ 2.23 Additional requirements for TEAS Plus application.

(a) * * *

(2) Maintain a valid e-mail correspondence address and continue to receive communications from the Office by e-mail.

* * * * *

7. Revise § 2.24 to read as follows:

§ 2.24 Designation and revocation of domestic representative by foreign applicant.

(a)(1) If an applicant is not domiciled in the United States, the applicant may designate the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark by:

(i) setting forth the name of the domestic representative in the initial application; or

(ii) filing a separate designation signed by the applicant, someone with legal authority to bind the applicant (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 10.14 of this chapter.

(2) If the applicant does not file a document designating the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, or if the last person designated cannot be found at the address given in the designation, then notices or process in proceedings affecting the mark may be served on the Director.

(3) The mere designation of a domestic representative does not authorize the person designated to represent the applicant unless qualified under § 10.14 of this chapter.

(b) A request to change or revoke a designation of domestic representative must be signed by the applicant, someone with legal authority to bind the applicant (e.g., a corporate officer or general partner of a partnership), or a

practitioner who meets the requirements of § 10.14 of this chapter.

8. Amend § 2.33 by revising paragraph (a) to read as follows, and removing paragraph (d):

§ 2.33 Verified statement.

(a) The application must include a statement that is signed in accordance with the requirements of § 2.193 and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant under § 2.193(e)(1).

* * * * *

9. Revise § 2.62 to read as follows:

§ 2.62 Procedure for filing response.

(a) *Deadline.* The applicant's response to an Office action must be received within six months from the date of issuance.

(b) *Signature.* The applicant, someone with legal authority to bind the applicant (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 10.14 of this chapter must sign the response, in accordance with the requirements of § 2.193(e)(2).

10. Revise § 2.64(b) to read as follows:

§ 2.64 Final action.

* * * * *

(b) During the period between a final action and expiration of the time for filing an appeal, the applicant may request the examiner to reconsider the final action. The applicant, someone with legal authority to bind the applicant (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 10.14 of this chapter must sign the request, in accordance with the requirements of § 2.193(e)(2). The filing of a request for reconsideration will not extend the time for filing an appeal or petitioning the Director, but normally the examiner will reply to a request for reconsideration before the end of the six-month period if the request is filed within three months after the date of the final action. The Office will enter amendments accompanying requests for reconsideration after final action if the amendments comply with the rules of practice in trademark cases and the Act of 1946.

11. Revise § 2.68 to read as follows:

§ 2.68 Express abandonment (withdrawal) of application.

(a) *Written document required.* An applicant may expressly abandon an application by filing a written request for abandonment or withdrawal of the application, signed by the applicant, someone with legal authority to bind the

applicant (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 10.14 of this chapter, in accordance with the requirements of § 2.193(e)(2).

(b) *Rights in the mark not affected.* Except as provided in § 2.135, the fact that an application has been expressly abandoned shall not, in any proceeding in the Office, affect any rights that the applicant may have in the mark in the abandoned application.

12. Amend § 2.74 by revising the heading and adding a new paragraph (c) to read as follows:

§ 2.74 Form and signature of amendment.

(c) The applicant, someone with legal authority to bind the applicant (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 10.14 of this chapter must sign the request for amendment, in accordance with the requirements of § 2.193(e)(2). If the amendment requires verification, the verification must be sworn to or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant under § 2.193(e)(1).

13. Revise § 2.76(b)(1) introductory text to read as follows:

§ 2.76 Amendment to allege use.

(b) A complete amendment to allege use must include:

(1) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.193(e)(1)) that:

14. Revise § 2.87(d) to read as follows:

§ 2.87 Dividing an application.

(d) The applicant, someone with legal authority to bind the applicant (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 10.14 of this chapter must sign the request to divide, in accordance with the requirements of § 2.193(e)(2). The request should be made in a separate document from any other amendment or response in the application, and captioned as a "Request to divide application."

15. Revise § 2.88(b)(1) introductory text to read as follows:

§ 2.88 Filing statement of use after notice of allowance.

(b) A complete statement of use must include:

(1) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.193(e)(1)) that:

16. Revise §§ 2.89(a)(3) and (b)(3) to read as follows:

§ 2.89 Extensions of time for filing a statement of use.

(3) A statement that the applicant still has a bona fide intention to use the mark in commerce, specifying the relevant goods or services, signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.193(e)(1)). If the verification is unsigned or signed by the wrong party, the applicant must submit a substitute verification within six months of the date of issuance of the notice of allowance.

(3) A statement that the applicant still has a bona fide intention to use the mark in commerce, specifying the relevant goods or services, signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.193(e)(1)). If the verification is unsigned or signed by the wrong party, the applicant must submit a substitute verification before the expiration of the previously granted extension; and

17. Revise § 2.146(c) to read as follows:

§ 2.146 Petitions to the Director.

(c) Every petition to the Director shall include a statement of the facts relevant to the petition, the points to be reviewed, the action or relief requested, and the fee required by § 2.6. Any brief in support of the petition shall be embodied in or accompany the petition. The petitioner, someone with legal authority to bind the petitioner (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 10.14 of this chapter must sign the petition, in accordance with the requirements of § 2.193(e)(2). When facts are to be proved on petition, the petitioner must submit proof in the form of affidavits or declarations in accordance with § 2.20, signed by someone with firsthand knowledge of the facts to be proved, and any exhibits.

18. Revise § 2.161(b) to read as follows:

§ 2.161 Requirements for a complete affidavit or declaration of continued use or excusable nonuse.

(b) Include a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the owner under § 2.193(e)(1), attesting to the use or excusable nonuse of the mark within the period set forth in section 8 of the Act. The verified statement must be executed on or after the beginning of the filing period specified in § 2.160(a).

19. Revise § 2.163(b) to read as follows:

§ 2.163 Acknowledgment of receipt of affidavit or declaration, and response to Office action.

(b) The owner must file a response to a refusal within six months of the mailing date of the Office action, or before the end of the filing period set forth in section 8(a) or section 8(b) of the Act, whichever is later. The owner, someone with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 10.14 of this chapter must sign the response, in accordance with the requirements of § 2.193(e)(2). If no response is filed within this time period, the registration will be cancelled.

20. Amend § 2.167 by revising the introductory text and paragraph (a) to read as follows:

§ 2.167 Affidavit or declaration under Section 15.

The owner of a mark registered on the Principal Register or a mark registered under the Act of 1881 or 1905 and published under section 12(c) of the Act (§ 2.153) may file an affidavit or declaration of incontestability under section 15 of the Act. The affidavit or declaration must:

(a) Be verified (sworn to) or supported by a declaration under § 2.20, signed by the owner of the registration or a person properly authorized to sign on behalf of the owner under § 2.193(e)(1);

21. Revise § 2.171 to read as follows:

§ 2.171 New certificate on change of ownership.

(a) If the ownership of a registered mark changes, the new owner may request that a new certificate of registration be issued in the name of the new owner for the unexpired part of the original period. The assignment or other

document changing title must be recorded in the Office, and the request for the new certificate must include the fee required by § 2.6(a)(8). The owner of the registration, someone with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 10.14 of this chapter must sign the request.

(b) When ownership of a registration has changed with respect to some, but not all, of the goods and/or services, the owner(s) may file a request that the registration be divided into two or more separate registrations. The fee required by § 2.6(a)(8) must be paid for each new registration created by the division, and the change of ownership must be recorded in the Office. The owner, someone with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 10.14 of this chapter must sign the request.

22. Revise § 2.172 to read as follows:

§ 2.172 Surrender for cancellation.

Upon application by the owner, the Director may permit any registration to be surrendered for cancellation. The owner of the registration, someone with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 10.14 of this chapter must sign the application for surrender. When a registration has more than one class, one or more entire class(es) but fewer than the total number of classes may be surrendered. Deletion of fewer than all the goods or services in a single class constitutes amendment of registration as to that class (see § 2.173), not surrender.

23. Revise § 2.173(a) to read as follows:

§ 2.173 Amendment of registration.

(a) The owner of a registration may apply to amend a registration or to disclaim part of the mark in the registration. The owner must submit a written request specifying the amendment or disclaimer. If the registration is involved in an inter partes proceeding before the Trademark Trial and Appeal Board, the request must be filed by appropriate motion to the Board. The request must include the required fee, and be signed by the owner of the registration, someone with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 10.14 of this chapter, and verified or supported by a declaration under § 2.20. If the

amendment involves a change in the mark, the owner must submit a new specimen showing the mark as used on or in connection with the goods or services, and a new drawing of the amended mark. The registration as amended must still contain registrable matter, and the mark as amended must be registrable as a whole. An amendment or disclaimer must not materially alter the character of the mark.

* * * * *

24. Revise § 2.175(b)(2) to read as follows:

§ 2.175 Correction of mistake by owner of registration.

* * * * *

(b) * * *

(2) Be signed by the owner of the registration, someone with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 10.14 of this chapter, and verified (sworn to) or supported by a declaration in accordance with § 2.20; and

* * * * *

25. Revise § 2.184(b) to read as follows:

§ 2.184 Refusal of renewal.

* * * * *

(b) A response to the refusal of renewal must be filed within six months of the mailing date of the Office action, or before the expiration date of the registration, whichever is later, or the registration will expire. The registrant, someone with legal authority to bind the registrant (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 10.14 of this chapter must sign the response, in accordance with the requirements of § 2.193(e)(2).

* * * * *

26. Revise § 2.193 to read as follows:

§ 2.193 Trademark correspondence and signature requirements.

(a) *Signature required.* Each piece of correspondence that requires a signature must bear:

(1) A handwritten signature personally signed in permanent ink by the person named as the signatory, or a true copy thereof; or

(2) An electronic signature that meets the requirements of paragraph (c) of this section, personally entered by the person named as the signatory. The Office will accept an electronic signature that meets the requirements of paragraph (c) of this section on correspondence filed on paper, by

facsimile transmission (§ 2.195(c)), or through TEAS or ESTTA.

(b) *Copy of original signature.* If a copy, such as a photocopy or facsimile copy of an original signature is filed, the filer should retain the original as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original.

(c) *Requirements for electronic signature.* A person signing a document electronically must:

(1) Personally enter any combination of letters, numbers, spaces and/or punctuation marks that he or she has adopted as a signature, placed between two forward slash (“/”) symbols in the signature block on the electronic submission; or

(2) Sign the verified statement using some other form of electronic signature specified by the Director.

(d) *Signatory must be identified.* The name of the person who signs a document in connection with a trademark application or registration must be set forth in printed or typed form immediately below or adjacent to the signature, or identified elsewhere in the filing (e.g., in a cover letter or other document that accompanies the filing).

(e) *Proper person to sign.* Documents filed in connection with a trademark application or registration must be signed by a proper person. Unless otherwise specified by law, the following requirements apply:

(1) *Verification of facts.* A verification in support of an application for registration, amendment to an application for registration, allegation of use under § 2.76 or § 2.78, request for extension of time to file a statement of use under § 2.89, or an affidavit under section 8, 15 or 71 of the Trademark Act must be sworn to or supported by a declaration under § 2.20, signed by the applicant or registrant, or a person properly authorized to sign on behalf of the applicant or registrant. A person who is properly authorized to verify facts on behalf of an applicant or registrant is:

(i) A person with legal authority to bind the applicant or registrant (e.g., a corporate officer or general partner of a partnership);

(ii) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the applicant or registrant; or

(iii) An attorney as defined in § 10.1(c) of this chapter who has an actual written or verbal power of attorney or an implied power of attorney from the applicant or registrant.

(2) *Responses, amendments to applications, requests for express abandonment, requests for*

reconsideration of final actions, notices of change of address, requests to divide, and petitions under § 2.146. The applicant or registrant, someone with legal authority to bind the applicant or registrant (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 10.14 of this chapter must sign responses to Office actions, amendments to applications, requests for express abandonment, requests for reconsideration of final actions, notices of change of address, requests to divide, and petitions under § 2.146, in accordance with the following guidelines:

(i) If the applicant or registrant is represented by a practitioner authorized to practice before the Office under § 10.14 of this chapter, the practitioner must sign, except where correspondence is required to be signed by the applicant or registrant; or

(ii) If the applicant or registrant is not represented by a practitioner authorized to practice before the Office under § 10.14 of this chapter, the individual applicant or registrant, or someone with legal authority to bind the applicant or registrant (e.g., a corporate officer or general partner of a partnership) must sign. In the case of joint applicants or joint registrants who are not represented by a practitioner authorized to practice before the Office under § 10.14 of this chapter, all must sign.

(3) *Powers of attorney and revocations of powers of attorney.* The individual applicant or registrant or someone with legal authority to bind the applicant or registrant (e.g., a corporate officer or general partner of a partnership) must sign powers of attorney and revocations of powers of attorney. In the case of joint applicants or joint registrants, all must sign. Once the applicant or registrant has designated a qualified practitioner(s), the named practitioner may sign an associate power of attorney appointing another qualified practitioner(s) as an additional person(s) authorized to prosecute the application or registration. If the applicant or registrant revokes the original power of attorney, this revocation also discharges any associate power signed by the practitioner whose power has been revoked.

(4) *Petition to revive under § 2.66.* Someone with firsthand knowledge of the facts regarding unintentional delay must sign a petition to revive under § 2.66.

(5) *Renewal applications.* The registrant or the registrant's representative must sign a renewal application.

(6) *Requests for correction, amendment or surrender of registrations.* The owner of the registration, someone with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership), or a practitioner authorized to practice before the Office under § 10.14 of this chapter must sign a request for correction, amendment or surrender of a registration. In the case of joint owners who are not represented by a practitioner authorized to practice before the Office under § 10.14 of this chapter, all must sign.

(7) *Designations and revocations of domestic representative.* A designation or revocation of a domestic representative must be signed by the applicant or registrant, someone with legal authority to bind the applicant or registrant (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 10.14 of this chapter.

(8) *Cover letters.* The person transmitting documents to the Office may sign a cover letter or transmittal letter. The Office neither requires cover letters nor questions the authority of a person who signs a communication that merely transmits documents.

(f) *Signature as certification.* The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any document by any person, whether a practitioner or non-practitioner, constitutes a certification under § 10.18(b) of this chapter. Violations of § 10.18(b) of this chapter may jeopardize the validity of the application or registration, and may result in the imposition of sanctions under § 10.18(c) of this chapter. Any practitioner violating § 10.18(b) of this chapter may also be subject to disciplinary action. See §§ 10.18(d) and 10.23(c)(15) of this chapter.

(g) *Separate copies for separate files.* (1) Since each file must be complete in itself, a separate copy of every document to be filed in connection with a trademark application, registration, or *inter partes* proceeding must be furnished for each file to which the document pertains, even though the contents of the documents filed in multiple files may be identical.

(2) Parties should not file duplicate copies of correspondence in a single application, registration, or proceeding file, unless the Office requires the filing of duplicate copies. The Office may dispose of duplicate copies of correspondence.

(h) *Separate documents for separate branches of the Office.* Since different branches or sections of the Office may consider different matters, each distinct

subject, inquiry or order must be contained in a separate document to avoid confusion and delay in answering correspondence.

(i) *Certified documents required by statute.* When a statute requires that a document be certified, a copy or facsimile transmission of the certification is not acceptable.

Dated: June 4, 2008.

Jon W. Dudas,

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

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2, 3, 6 and 7

[Docket No. PTO-T-2005-0018]

RIN 0651-AB89

Miscellaneous Changes to Trademark Rules of Practice

AGENCY: United States Patent and Trademark Office, Commerce.

ACTIONS: Proposed rule.

SUMMARY: The United States Patent and Trademark Office ("Office") proposes to amend the Trademark Rules of Practice to clarify certain requirements for applications, intent to use documents, amendments to classification, requests to divide, and Post Registration practice; to modernize the language of the rules; and to make other miscellaneous changes. For the most part, the proposed rule changes are intended to codify existing practice, as set forth in the *Trademark Manual of Examining Procedure* ("TMEP").

DATES: Comments must be received by August 11, 2008 to ensure consideration.

ADDRESSES: The Office prefers that comments be submitted via electronic mail message to TMRules@uspto.gov. Written comments may also be submitted by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, attention Mary Hannon; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia, attention Mary Hannon; or by electronic mail message via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (<http://www.regulations.gov>) for additional instructions on providing