

Dated: September 21, 2004.

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Parts 1 and 41

RIN 0651-AB32

#### Rules of Practice Before the Board of Patent Appeals and Interferences

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Final rule; Correcting amendments.

**SUMMARY:** The United States Patent and Trademark Office (Office) is correcting a rule that appeared in the **Federal Register** of 12 August 2004 (69 FR 49960). The document revised the rules of practice before the Board of Patent Appeals and Interferences and made corresponding amendments to rules in 37 CFR part 1.

**DATES:** *Effective date:* September 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Richard Torczon, 703-308-9797.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 04-17699 appearing on page 49960 in the **Federal Register** of 12 August 2004, the following correction is made to the **SUPPLEMENTARY INFORMATION:**

On page 49980, first column, third full paragraph (answer to comment 69), the fourth sentence "Furthermore, it is noted that the appellant can file a request for continued prosecution pursuant to § 1.114 and then the appellant would be able to submit an amendment and/or evidence directed to only claims unrelated to the new ground of rejection and have such considered by the examiner." is corrected to read: "Furthermore, it is noted that the appellant can file a request for continued prosecution pursuant to § 1.114 and then the appellant would be able to submit an amendment and/or evidence also directed to claims unrelated to the new ground of rejection and have such considered by the examiner."

#### List of Subjects

##### 37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents,

Reporting and recordkeeping requirements, Small businesses.

##### 37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

■ Therefore, 37 CFR parts 1 and 41 are corrected by making the following correcting amendments:

#### PART 1—RULES OF PRACTICE IN PATENT CASES

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

**Authority:** 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. In § 1.248, revise paragraph (c) to read as follows:

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

\* \* \* \* \*

(c) See § 41.106(e) of this title for service of papers in contested cases before the Board of Patent Appeals and Interferences.

■ 3. In § 1.302, revise paragraph (b) to read as follows:

##### § 1.302 Notice of appeal.

\* \* \* \* \*

(b) In interferences, the notice must be served as provided in § 41.106(e) of this title.

\* \* \* \* \*

■ 4. In § 1.303, revise paragraph (c) to read as follows:

##### § 1.303 Civil action under 35 U.S.C. 145, 146, 306.

\* \* \* \* \*

(c) A notice of election under 35 U.S.C. 141 to have all further proceedings on review conducted as provided in 35 U.S.C. 146 must be filed with the Office of the Solicitor and served as provided in § 41.106(e) of this title.

\* \* \* \* \*

#### PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

■ 5. The authority citation continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135.

■ 6. In § 41.3, revise paragraph (e)(1) to read as follows:

##### § 41.3 Petitions.

\* \* \* \* \*

(e) *Time for action.* (1) Except as otherwise provided in this part or as the

Board may authorize in writing, a party may:

(i) File the petition within 14 days from the date of the action from which the party is requesting relief, and

(ii) File any request for reconsideration of a petition decision within 14 days of the decision on petition or such other time as the Board may set.

\* \* \* \* \*

■ 7. In § 41.127, revise paragraph (d) to read as follows:

##### § 41.127 Judgment.

\* \* \* \* \*

(d) *Rehearing.* A party dissatisfied with the judgment may file a request for rehearing within 30 days of the entry of the judgment. The request must specifically identify all matters the party believes to have been misapprehended or overlooked, and the place where the matter was previously addressed in a motion, opposition, or reply.

■ 8. In § 41.154, revise paragraph (c)(1) to read as follows:

##### § 41.154 Form of evidence.

\* \* \* \* \*

(c) \* \* \*

(1) Each exhibit must have an exhibit label with a unique number in a range assigned by the Board, the names of the parties, and the proceeding number in the following format:

JONES EXHIBIT 2001  
Jones v. Smith  
Contested Case 104,999  
\* \* \* \* \*

■ 9. In § 41.155, revise paragraph (b) to read as follows:

##### § 41.155 Objection; motion to exclude; motion in limine.

\* \* \* \* \*

(b) *Other than deposition.* For evidence other than deposition evidence:

(1) *Objection.* Any objection must be served within five business days of service of evidence, other than deposition evidence, to which the objection is directed.

(2) *Supplemental evidence.* The party relying on evidence for which an objection is timely served may respond to the objection by serving supplemental evidence within ten business days of service of the objection.

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Dated: September 24, 2004.

Jon W. Dudas,

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

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