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DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1 and 41

PTO-C-2011-0007

RIN 0651-AC55

CPI Adjustment of Patent Fees for Fiscal Year 2013

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office) is proposing to adjust certain patent fee amounts for fiscal year 2013 to reflect fluctuations in the Consumer Price Index (CPI). The patent statute provides for the annual CPI adjustment of patent fees set by statute to recover the higher costs associated with doing business as reflected by the CPI.

DATE: Written comments must be received on or before [Insert date 30 days after publication in the FEDERAL REGISTER]. No public hearing will be held.

ADDRESSES: You may submit comments, identified by RIN number RIN 0651-AC55, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: Gilda.Lee@uspto.gov. Include RIN number RIN 0651-AC55 in the subject line of the message.
- Fax: (571) 273-8698, marked to the attention of Gilda Lee.
- Mail: Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of Gilda Lee.

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) for this proposed rulemaking.

The comments will be available for public inspection at the Office of the Chief Financial Officer, currently located in Madison West, Tenth Floor, 600 Dulany Street, Alexandria, Virginia.

Comments also will be available for viewing via the Office's Internet Web site (<http://www.uspto.gov>). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Gilda Lee by e-mail at

Gilda.Lee@uspto.gov, by telephone at (571) 272-8698, or by fax at (571) 273-8698.

SUPPLEMENTARY INFORMATION: Section 41(f) of Title 35 of the United States Code provides the USPTO with the authority to adjust certain statutory patent fees to reflect fluctuations during the preceding twelve months in the Consumer Price Index (CPI). The purpose of this provision is to allow the USPTO to recover higher costs of providing services as reflected by the CPI. The USPTO proposes to adjust certain patent fees in accordance with 35 U.S.C. 41(f), as amended by the Consolidated Appropriations Act (Pub. L. No. 108-447, 118 Stat. 2809 (2004)) and the Leahy-Smith America Invents Act (Pub. L. No. 112-29). The fee increase helps the USPTO to meet its strategic goals and maintain effective and efficient operation of the patent system. This notice sets forth which fees will be adjusted and how the adjustment will be calculated based on the current fluctuation in the CPI over the twelve months preceding this notice. The actual adjustment will be calculated based on the fluctuation in the CPI over the twelve months preceding the date on which the final rule is published.

Background

Statutory Provisions: As background concerning the patent fee structure, patent fees are set by or under the authority provided in 35 U.S.C. 41, 119, 120, 132(b), 156, 157(a), 255, 302, 311, 376, section 532(a)(2) of the Uruguay Round Agreements Act (URAA) (Pub. L. No. 103-465, § 532(a)(2), 108 Stat. 4809, 4985 (1994)), and section 4506 of the American Inventors Protection Act of 1999 (AIPA) (Pub. L. No. 106-113, 113 Stat. 1501, 1501A-565 (1999)). For fees paid under 35 U.S.C. 41(a) and (b) and 132(b), independent inventors, small business concerns, and nonprofit organizations who meet the requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

The fiscal year 2005 Consolidated Appropriations Act (section 801 of Division B) provided that 35 U.S.C. 41(a), (b), and (d) shall be administered in a manner that revises patent application fees (35 U.S.C. 41(a)) and patent maintenance fees (35 U.S.C. 41(b)), and provides for a separate filing fee (35 U.S.C. 41(a)), search fee (35 U.S.C. 41(d)(1)), and examination fee (35 U.S.C. 41(a)(3)) during fiscal years 2005 and 2006. See Pub. L. No. 108-447, 118 Stat. 2809, 2924-30 (2004). The Omnibus Appropriations Act, 2009, extended the patent and trademark fee provisions of the fiscal year 2005 Consolidated Appropriations Act through September 30, 2011. See Pub. L. No. 112-4, 125 Stat. 6 (2011); Pub. L. No. 111-322, 124 Stat. 3518 (2010); Pub. L. No. 111-317, 124 Stat. 3454 (2010); Pub. L. No. 111-290, 124 Stat. 3063 (2010); Pub. L. No. 111-242, 124 Stat. 2607 (2010); Pub. L. No. 111-224, 124 Stat. 2385 (2010); Pub. L. No. 111-117, 123 Stat. 3034 (2009); Pub. L. No. 111-8, 123 Stat. 524 (2009); Pub. L. No. 111-6, 123 Stat. 522 (2009); Pub. L. No. 111-5, 123 Stat. 115 (2009); Pub. L. No. 110-329, 122 Stat. 3574 (2008); Pub. L. No. 110-161, 121 Stat. 1844 (2007); Pub. L. No. 110-149, 121 Stat. 1819 (2007); Pub. L. No. 110-137, 121 Stat. 1454 (2007); Pub. L. No. 110-116, 121 Stat. 1295 (2007); Pub. L. No. 110-92, 121 Stat. 989 (2007); Pub. L. No. 110-5, 121 Stat. 8 (2007); Pub. L. No. 109-383, 120 Stat. 2678 (2006); Pub. L. No. 109-369, 120 Stat. 2642 (2006); and Pub. L. No. 109-289, 120 Stat. 1257 (2006). The Leahy-Smith America Invents Act, enacted September 16, 2011, codified the patent and trademark fee provisions of the fiscal year 2005 Consolidated Appropriations Act.

Section 11 of the Leahy-Smith America Invents Act provides for a surcharge of fifteen percent, rounded by standard arithmetic rules, on all fees charged or authorized by 35

U.S.C. 41(a), (b), and (d)(1), as well as by 35 U.S.C. 132(b). Section 11 of the Act provides that this fifteen percent surcharge is effective ten days after the date of enactment (i.e., September 26, 2011). Section 11 also provides that this fifteen percent surcharge shall terminate, with respect to a fee to which the surcharge applies, on the effective date of the setting or adjustment of that fee pursuant to the exercise of the authority under section 10 of the Act for the first time with respect to that fee. Section 10 fee-setting will be implemented in a future separate rulemaking.

As for this rulemaking, Section 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the Consumer Price Index over the previous twelve months. If the annual change in CPI is one percent or less, no fee adjustment for CPI fluctuations will be pursued.

The USPTO proposes that this CPI increase be implemented on October 1, 2012. This interim increase in fees is necessary to allow the USPTO to meet its strategic goals within the time frame outlined in the FY 2013 President's Budget. The interim fee increase is a bridge to provide resources until the USPTO exercises its fee-setting authority and develops a new fee structure that will provide sufficient financial resources in the long term. An adequately funded USPTO will optimize the administration of the U.S. intellectual property system, and thereby move innovation to the marketplace more quickly, creating and sustaining U.S. jobs and enhancing the health and living standards of Americans.

Fee Adjustment Level: The USPTO proposes that the patent statutory fees established by 35 U.S.C. 41(a) and (b) be adjusted to reflect the most recent fluctuations occurring during the twelve-month period prior to publication of the final rule implementing this CPI adjustment, as measured by the Consumer Price Index for All Urban Consumers (CPI-U). The Office of Management and Budget (OMB) has advised that in calculating these fluctuations, the USPTO should use CPI-U data as determined by the Secretary of Labor, which is found at <http://www.bls.gov/cpi/>.

In accordance with the above description of the statutory fee adjustment, the USPTO proposes to adjust patent statutory fee amounts based on the most recent annual increase in the CPI-U, as reported by the Secretary of Labor, at the time the final rule implementing this CPI adjustment is published. Proposed adjusted fee amounts are not included in this proposed rule in order to avoid confusion that could arise from using projected increases in the proposed rule that may not end up matching actual increases at the time of the final rule. Annual increases to the CPI-U are published monthly, and before the final fee amounts are published, the fee amounts may be adjusted based on actual fluctuations in the CPI-U. Adjusted patent statutory fee amounts based on the most recent annual increase in the CPI-U, as reported by the Secretary of Labor, will be published in a final rules notice.

The fee amounts will be rounded by applying standard arithmetic rules so that the amounts rounded will be convenient to the user. Fees for other than a small entity of

\$100 or more will be rounded to the nearest \$10. Fees of less than \$100 will be rounded to an even number so that any comparable small entity fee will be a whole number.

General Procedures: Any fee amount adjusted by the final rule that is paid on or after the effective date of the fee adjustment enacted by the final rule would be subject to the new fees then in effect. The amount of the fee to be paid for a given item will be determined by the time of filing of that item with the Office. The time of filing will be determined either according to the date of receipt in the Office (37 CFR 1.6) or the date reflected on a proper Certificate of Mailing or Transmission, where such a certificate is authorized under 37 CFR 1.8. Use of a Certificate of Mailing or Transmission is not authorized for items that are specifically excluded from the provisions of 37 CFR 1.8. Items for which a Certificate of Mailing or Transmission under 37 CFR 1.8 is not authorized include, for example, filing of national and international applications for patents. See 37 CFR 1.8(a)(2).

Patent-related correspondence delivered by the “Express Mail Post Office to Addressee” service of the United States Postal Service (USPS) is considered filed or received in the USPTO on the date of deposit with the USPS. See 37 CFR 1.10(a)(1). The date of deposit with the USPS is shown by the “date-in” on the “Express Mail” mailing label or other official USPS notation.

To ensure clarity in the implementation of the proposed new fees, a discussion of specific sections is set forth below.

Discussion of Specific Rules

37 CFR 1.16 National application filing, and examination fees: Section 1.16, paragraphs (a) through (e) , (h) through (j) and (o) through (s), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI-U. See Table 1.

37 CFR 1.17 Patent application and reexamination processing fees: Section 1.17, paragraphs (a)(1) through (a)(5), (l), and (m), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI-U. See Table 1.

37 CFR 1.18 Patent post allowance (including issue) fees: Section 1.18, paragraphs (a) through (c), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI-U. See Table 1.

37 CFR 1.20 Post issuance fees: Section 1.20, paragraphs (c)(3)-(c)(4), and (d) through (g), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI-U. See Table 1.

37 CFR 1.492 National stage fees: Section 1.492, paragraphs (a), (c)(2), (d) through (f) and (j), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI-U. See Table 1.

37 CFR 41.20 Fees: Section 41.20, paragraphs (b)(1) through (b)(3), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI-U. See Table 1.

Example of Fee Amount Adjustments: Adjusted patent statutory fee amounts based on the most recent annual increase in the CPI-U, as reported by the Secretary of Labor, will be published in the final rule implementing this CPI adjustment. Table 1 provides examples of possible fee adjustments based on the February 2011 to February 2012 annual CPI-U increase of 2.9%.

HYPOTHETICAL FEE ADJUSTMENT CALCULATIONS BASED ON CPI-U
ADJUSTMENT OF 2.9%

Table 1

37 CFR	Fee Title	Current Fee Amount	Hypothetical Fee Amount (2.9% Increase)	Hypothetical Fee Adjustment
1.16(a)(1)	Filing of Utility Patent Application (on or after 12/8/2004)	\$380 Small Entity (SE) \$190	\$390 SE \$195	\$10 SE \$5
1.16(a)(1)	Filing of Utility Patent Application (electronic filing for small entities) (on or after 12/8/2004)	\$95	\$98	\$3
1.16(b)(1)	Filing of Design Patent Application (on or after 12/8/2004)	\$250 SE \$125	\$260 SE \$130	\$10 SE \$5
1.16(b)(1)	Filing of Design Patent Application (Continued Prosecution Application) (on or after 12/8/2004)	\$250 SE \$125	\$260 SE \$130	\$10 SE \$5
1.16(c)(1)	Filing of Plant Patent Application (on or after 12/8/2004)	\$250 SE \$125	\$260 SE \$130	\$10 SE \$5
1.16(d)	Provisional	\$250	\$260	\$10

	Application Filing	SE \$125	SE \$130	SE \$5
1.16(e)(1)	Filing of Reissue Patent Application (on or after 12/8/2004)	\$380 SE \$190	\$390 SE \$195	\$10 SE \$5
1.16(e)(1)	Filing of Reissue Patent Application (CPA) (on or after 12/8/2004)	\$380 SE \$190	\$390 SE \$195	\$10 SE \$5
1.16(h)	Independent Claims in Excess of Three	\$250 SE \$125	\$260 SE \$130	\$10 SE \$5
1.16(h)	Reissue Independent Claims in Excess of Three	\$250 SE \$125	\$260 SE \$130	\$10 SE \$5
1.16(i)	Claims in Excess of Twenty	\$60 SE \$30	\$62 SE \$31	\$2 SE \$1
1.16(i)	Reissue Total Claims in Excess of Twenty	\$60 SE \$30	\$62 SE \$31	\$2 SE \$1
1.16(j)	Multiple Dependent Claims	\$450 SE \$225	\$460 SE \$230	\$10 SE \$5
1.16(o)	Utility Patent Examination	\$250 SE \$125	\$260 SE \$130	\$10 SE \$5
1.16(p)	Design Patent Examination	\$160 SE \$80	\$160 SE \$80	\$0 SE \$0
1.16(q)	Plant Patent Examination	\$200 SE \$100	\$210 SE \$105	\$10 SE \$5
1.16(r)	Reissue Patent Examination	\$750 SE \$375	\$770 SE \$385	\$20 SE \$10
1.16(s)	Utility Application Size Fee – For each additional 50 sheets that exceeds 100 sheets	\$310 SE \$155	\$320 SE \$160	\$10 SE \$5
1.16(s)	Design Application Size Fee– For each additional 50 sheets that exceeds 100 sheets	\$310 SE \$155	\$320 SE \$160	\$10 SE \$5
1.16(s)	Plant Application Size Fee– For each additional 50 sheets that exceeds 100 sheets	\$310 SE \$155	\$320 SE \$160	\$10 SE \$5
1.16(s)	Reissue Application Size Fee– For each additional 50 sheets that exceeds 100 sheets	\$310 SE \$155	\$320 SE \$160	\$10 SE \$5
1.16(s)	Provisional Application Size Fee– For each additional 50 sheets that exceeds 100 sheets	\$310 SE \$155	\$320 SE \$160	\$10 SE \$5
1.17(a)(1)	Extension for	\$150	\$150	\$0

	Response within First Month	SE \$75	SE \$75	SE \$0
1.17(a)(2)	Extension for Response within Second Month	\$560 SE \$280	\$580 SE \$290	\$20 SE \$10
1.17(a)(3)	Extension for Response within Third Month	\$1,270 SE \$635	\$1,310 SE \$655	\$40 SE \$20
1.17(a)(4)	Extension for Response within Fourth Month	\$1,980 SE \$990	\$2,040 SE \$1,020	\$60 SE \$30
1.17(a)(5)	Extension for Response within Fifth Month	\$2,690 SE \$1,345	\$2,770 SE \$1,385	\$80 SE \$40
1.17(l)	Petition to Revive Unavoidably Abandoned Application	\$620 SE \$310	\$640 SE \$320	\$20 SE \$10
1.17(m)	Petition to Revive Unintentionally Abandoned Application	\$1,860 SE \$930	\$1,910 SE \$955	\$50 SE \$25
1.18(a)	Utility Issue	\$1,740 SE \$870	\$1,790 SE \$895	\$50 SE \$25
1.18(a)	Reissue Issue	\$1,740 SE \$870	\$1,790 SE \$895	\$50 SE \$25
1.18(b)	Design Issue	\$990 SE \$495	\$1,020 SE \$510	\$30 SE \$15
1.18(c)	Plant Issue	\$1,370 SE \$685	\$1,410 SE \$705	\$40 SE \$20
1.20(c)(3)	Reexamination Independent Claims in Excess of Three	\$250 SE \$125	\$260 SE \$130	\$10 SE \$5
1.20(c)(4)	Reexamination Total Claims in Excess of Twenty	\$60 SE \$30	\$62 SE \$31	\$2 SE \$1
1.20(d)	Statutory Disclaimer	\$160 SE \$80	\$160 SE \$80	\$0 SE \$0
1.20(e)	First Stage Maintenance	\$1,130 SE \$565	\$1,160 SE \$580	\$30 SE \$15
1.20(f)	Second Stage Maintenance	\$2,850 SE \$1,425	\$2,930 SE \$1,465	\$80 SE \$40
1.20(g)	Third Stage Maintenance	\$4,730 SE \$2,365	\$4,870 SE \$2,435	\$140 SE \$70
1.492(a)	Filing of PCT National Stage Application	\$380 SE \$190	\$390 SE \$195	\$10 SE \$5
1.492(c)(2)	PCT National Stage Examination - All Other Situations	\$250 SE \$125	\$260 SE \$130	\$10 SE \$5
1.492(d)	Independent Claims in Excess of Three	\$250	\$260	\$10

		SE \$125	SE \$130	SE \$5
1.492(e)	Total Claims in Excess of Twenty	\$60 SE \$30	\$62 SE \$31	\$2 SE \$1
1.492(f)	Multiple Dependent Claims	\$450 SE \$225	\$460 SE \$230	\$10 SE \$5
1.492(j)	PCT National Stage Application Size Fee	\$310 SE \$155	\$320 SE \$160	\$10 SE \$5
41.20(b)(1)	Notice of Appeal	\$620 SE \$310	\$640 SE \$320	\$20 SE \$10
41.20(b)(2)	Filing a Brief in Support of an Appeal	\$620 SE \$310	\$640 SE \$320	\$20 SE \$10
41.20(b)(3)	Request for Oral Hearing	\$1,240 SE \$620	\$1,280 SE \$640	\$40 SE \$20

Rulemaking Considerations:

A. Initial Regulatory Flexibility Analysis:

1. Description of the reasons that action by the agency is being considered: The USPTO is proposing to adjust the patent fees set under 35 U.S.C. 41(a) and (b) to ensure proper funding for effective operations. The patent fee CPI adjustment under 35 U.S.C. 41(f) is a routine adjustment that has generally occurred on an annual basis when necessary to recover the higher costs of USPTO operations that occur due to the increase in the price of products and services.

2. Succinct statement of the objectives of, and legal basis for, the proposed rules: Patent fees are set by or under the authority provided in 35 U.S.C. 41, 119, 120, 132(b), 156, 157(a), 255, 302, 311, 376, section 532(a)(2) of the URAA, and 4506 of the AIPA. The objective of the proposed change is to adjust patent fees set under 35 U.S.C. 41(a) and (b) as an annual, routine step in order to recover the higher costs of USPTO operations as reflected by the CPI. 35 U.S.C. 41(f) provides that fees established under

35 U.S.C. 41(a) and (b) may be adjusted every year to reflect fluctuations in the CPI over the previous twelve months.

3. Description and estimate of the number of affected small entities: The Small Business Administration (SBA) small business size standards applicable to most analyses conducted to comply with the Regulatory Flexibility Act are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with fewer than a maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. The USPTO, however, has formally adopted, with SBA approval, an alternate size standard as the size standard for the purpose of conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations, 71 FR 67109 (Nov. 20, 2006), 1313 Off. Gaz. Pat. Office 60 (Dec. 12, 2006). This alternate small business size standard is the previously established size standard that identifies the criteria entities must meet to be entitled to pay reduced patent fees. See 13 CFR 121.802. If patent applicants identify themselves on the patent application as qualifying for reduced patent fees, the USPTO captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the USPTO.

Unlike the general SBA small business size standards set forth in 13 CFR 121.201, USPTO's approved alternative size standard is not industry-specific. Specifically, the

USPTO definition of small business concern for Regulatory Flexibility Act purposes is a business or other concern that: (1) meets the SBA's definition of a "business concern or concern" set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely an entity: (a) whose number of employees, including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this definition. See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations, 71 FR at 67112 (November 20, 2006), 1313 Off. Gaz. Pat. Office at 63 (December 12, 2006).

The changes in this proposed rule will apply to any small entity that files a patent application, or has a pending patent application or unexpired patent. The changes in this proposed rule will specifically apply when an applicant or patentee pays an application filing or national stage entry fee, search fee, examination fee, extension of time fee, notice of appeal fee, appeal brief fee, request for an oral hearing fee, petition to revive fee, issue fee, or patent maintenance fee.

The USPTO has been advised that a number of small entity applicants and patentees do not claim small entity status for various reasons. See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis

for Patent-Related Regulations, 71 FR at 67110 (November 20, 2006), 1313 Off. Gaz. Pat. Office at 61 (December 12, 2006). Therefore, the USPTO is also considering all other entities paying patent fees as well in an effort to capture the impact on all small entity applicants whether they claim that status or not.

4. Description of the projected reporting, recordkeeping and other compliance requirements of the proposed rules, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record: This notice does **not** propose any reporting, recordkeeping and other compliance requirements. This notice proposes only to adjust patent fees (as discussed previously) to reflect changes in the CPI.

5. Description of any significant alternatives to the proposed rules which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rules on small entities: The alternative of not adjusting patent fees would have a lesser economic impact on small entities, but would not accomplish the stated objectives of applicable statutes. The USPTO is proposing a small adjustment to patent fees, under 35 U.S.C. 41(f), to ensure proper funding for effective operations in light of changes in the CPI. The patent fee CPI adjustment is a routine adjustment that has generally occurred on an annual basis to recover the higher costs of USPTO operations that occur due to increases in the price of products and services. This CPI adjustment helps the Office maintain effective operations and decrease patent pendency levels.

6. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rules: The USPTO is the sole agency of the United States Government responsible for administering the provisions of title 35, United States Code, pertaining to examination and granting patents. Therefore, no other Federal, state, or local entity shares jurisdiction over the examination and granting of patents.

Other countries, however, have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the Patent Cooperation Treaty (PCT)). Nevertheless, the USPTO believes that there are no other duplicative or overlapping rules.

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

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002), and Executive Order 13422 (Jan. 18, 2007).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563 (Jan. 8, 2011). Specifically, the Office has: (1) used the best available techniques to quantify costs and benefits, and has considered values such as equity, fairness and distributive impacts; (2) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected, by issuing this notice of proposed rulemaking and providing on-line access to the rulemaking docket; (3) attempted to promote coordination, simplification and harmonization across government agencies and identified goals designed to promote innovation; (4) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (5) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

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

F. Executive Order 13211 (Energy Effects): This rulemaking is **not** a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a

Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

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

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

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

J. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the Government Accountability Office. The changes proposed in this notice are **not** expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse

effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is **not** likely to result in a “major rule” as defined in 5 U.S.C. 804(2).

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

L. National Environmental Policy Act: This rulemaking will **not** have any effect on the quality of environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 et seq.

M. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are inapplicable because this rulemaking does **not** contain provisions which involve the use of technical standards.

N. Paperwork Reduction Act: This proposed 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 collections of information involved in this proposed rule have been reviewed and approved by OMB. The Office is not resubmitting information collection requests to OMB for its review and approval at this time because the changes proposed in this notice revise the fees for existing information collection requirements under OMB control numbers 0651-0016, 0651-0021, 0651-0024, 0651-0031, 0651-0032, 0651-0033, 0651-0063, and 0651-0064. The USPTO will submit to OMB fee revision changes for OMB control numbers 0651-0016, 0651-0021, 0651-0024, 0651-0031, 0651-0032, 0651-0033, 0651-0063, and 0651-0064 if the changes proposed in this notice are adopted.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

May 8, 2012

Date

David J. Kappos

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

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