



[3510-16-P]

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO-T-2017-0004]

RIN 0651-AD15

Changes to the Trademark Rules of Practice to Mandate Electronic Filing

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) amends the Rules of Practice in Trademark Cases and the Rules of Practice in Filings Pursuant to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks to mandate electronic filing of trademark applications and all submissions associated with trademark applications and registrations, and to require the designation of an email address for receiving USPTO correspondence, with limited exceptions. This rule advances the USPTO's IT strategy to achieve complete end-to-end

electronic processing of trademark-related submissions, thereby improving administrative efficiency by facilitating electronic file management, optimizing workflow processes, and reducing processing errors.

DATES: This rule is effective on October 5, 2019.

FOR FURTHER INFORMATION CONTACT: Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, TMPolicy@uspto.gov, (571) 272-8946.

SUPPLEMENTARY INFORMATION:

Purpose: The USPTO revises the rules in parts 2 and 7 of title 37 of the Code of Federal Regulations to require electronic filing through the USPTO's Trademark Electronic Application System (TEAS) of all trademark applications based on section 1 and/or section 44 of the Trademark Act (Act), 15 U.S.C. 1051, 1126, and submissions filed with the USPTO concerning applications or registrations. These submissions include, for example, responses to Office actions, registration maintenance filings, international applications, subsequent designations, and direct filings with the USPTO relating to extensions of protection through the international registration system. In addition, this rulemaking requires the designation of an email address for receiving USPTO correspondence concerning these submissions.

The requirement to file an initial application through TEAS does not apply to applications based on section 66(a) of the Act, 15 U.S.C. 1141f, because these applications are initially filed with the International Bureau (IB) of the World Intellectual Property Organization and subsequently transmitted electronically to the USPTO. However, section 66(a) applicants and registrants are required to electronically file all

subsequent submissions concerning their applications or registrations and to designate an email address for receiving USPTO correspondence. This rulemaking does not encompass electronic filing of submissions made to the Trademark Trial and Appeal Board (TTAB) in ex parte or inter partes proceedings. Such submissions are currently required to be filed through the USPTO's Electronic System for Trademark Trials and Appeals (ESTTA).

This rule is intended to maximize end-to-end electronic processing of applications and related submissions, as well as registration maintenance filings. Achieving complete end-to-end electronic processing of all trademark submissions is an IT objective of the USPTO. End-to-end electronic processing means that an application and all application- and registration-related submissions are filed and processed electronically, and any related correspondence between the USPTO and the relevant party is conducted entirely electronically. Thus, an application that is processed electronically end to end would be filed through TEAS, and all submissions related to the application, such as voluntary amendments, responses to Office actions, or allegations of use, would also be filed through TEAS. With this change, outgoing USPTO correspondence regarding the application will be sent by email. Likewise, all submissions related to a registration must be filed through TEAS and outgoing USPTO correspondence regarding the registration will be sent by email.

Although more than 99% of applications under section 1 or section 44 are now filed electronically, just under 88% are currently prosecuted electronically from end to end. This means that approximately 12% of these filings still involve paper processing. Prior reductions in the filing fees for electronic submissions resulted in almost 100% of

new applications being filed electronically, but have not achieved complete end-to-end electronic processing. By mandating electronic filing of trademark applications and submissions concerning applications or registrations through TEAS, the amended rules will reduce paper processing to an absolute minimum and thus maximize end-to-end electronic processing.

End-to-end electronic processing of all applications, related correspondence, statutorily required registration maintenance submissions, and other submissions will benefit trademark customers and increase the USPTO's administrative efficiency by facilitating electronic file management, optimizing workflow processes, and reducing processing errors. Paper submissions hinder efficiency and accuracy and are more costly to process than electronic submissions because they require manual uploading of scanned copies of the documents into the USPTO electronic records system and manual data entry of information in the documents. Electronic submissions through TEAS, on the other hand, generally do not require manual processing and are automatically categorized, labeled, and uploaded directly into an electronic file in the USPTO electronic records system for review by USPTO employees and the public. If a TEAS submission contains amendments or other changes to the information in the record, often those amendments and changes are automatically entered into the electronic records system. Furthermore, TEAS submissions are more likely to include all necessary information because the USPTO can update its forms to specifically tailor the requirements for a particular submission and require that the information be validated prior to submission. Consequently, preparing and submitting an application or related document, or a registration maintenance filing, through TEAS is likely to result in a more complete

submission and take less time than preparing and mailing the paper equivalent. Thus, TEAS submissions help ensure more complete filings, expedite processing, shorten pendency, minimize manual data entry and potential data-entry errors, and eliminate the potential for lost or missing papers.

This rule also requires the designation of an email address for receiving USPTO correspondence concerning these submissions, which is either that of the applicant or registrant, if unrepresented, or an authorized attorney, if one has been appointed. Currently, in order to receive a filing date for a new application under section 1 or section 44, the USPTO requires, among other things, that the applicant designate an “address for correspondence.” 37 CFR 2.21(a)(2). Applicants who filed using the TEAS Plus or TEAS Reduced Fee (TEAS RF) filing options have been required to designate an email address for correspondence, while those who filed on paper or through the regular TEAS application were permitted to designate a postal address. This rule requires applicants and registrants, and parties to a proceeding before the TTAB, to provide and maintain an email address for correspondence. The requirement to designate an email address for receiving USPTO correspondence benefits the USPTO and its customers by reducing costs and increasing efficiency. Email correspondence can be sent, received, and processed faster than paper correspondence, which must be printed, collated, scanned, and uploaded to the electronic records system, and mailed domestically or internationally, at greater expense. Under this rule, applicants and registrants, and parties to a proceeding before the TTAB, are also required to provide and maintain a postal address. The domicile address specified for an applicant, registrant, or party to a proceeding will be treated by the Office as the postal address for the applicant, registrant, or party. In the

rare circumstance where mail cannot be delivered to its domicile address, the applicant, registrant, or party may request to designate a postal address where mail can be delivered.

A qualified practitioner representing an applicant, registrant, or party also is required to provide and maintain a postal address. This requirement ensures the USPTO's ability to contact the applicant, registrant, party, or practitioner by mail in certain limited circumstances, such as when an appointed practitioner is suspended or excluded from practice before the USPTO and is no longer the correspondent, or when the Office sends a physical registration certificate.

Previous Initiatives to Increase End-to-End Electronic Processing: The USPTO previously amended its rules to encourage electronic filing through TEAS and email communication by establishing the TEAS Plus and TEAS RF filing options for applications based on section 1 and/or section 44. *See* 37 CFR 2.6. These filing options have lower application fees than a regular TEAS application, but, unlike a regular TEAS application, they require the applicant to (1) provide, authorize, and maintain an email address for receiving USPTO correspondence regarding the application and (2) file certain application-related submissions through TEAS. *See* 37 CFR 2.22, 2.23. If the applicant does not fulfill these requirements, the applicant must pay an additional processing fee. *See* 37 CFR 2.6, 2.22, 2.23.

Despite these additional requirements, and the potential additional processing fee for noncompliance, the TEAS RF filing option is now the most popular filing option among USPTO customers, followed by TEAS Plus. These two filing options currently account for nearly 99% of all new trademark applications filed under section 1 and/or

section 44, suggesting that applicants are comfortable with filing and communicating with the USPTO electronically.

Furthermore, in January 2017, the USPTO revised its rules to increase fees for paper filings to bring the fees nearer to the cost of processing the filings and encourage customers to use lower-cost electronic options. As a result of these rule changes, the USPTO is now processing nearly 88% of applications filed under section 1 and/or section 44 electronically end to end.

Discussion of Rule Changes:

(1) New Applications. Under this rule, § 2.21 is amended to require applicants to file electronically, through TEAS, any trademark, service mark, certification mark, collective membership mark, or collective trademark or service mark application for registration on the Principal or Supplemental Register under section 1 and/or section 44. As noted above, the requirement to file an application through TEAS does not apply to applications based on section 66(a) because they are initially processed by the IB and subsequently transmitted electronically to the USPTO.

The TEAS RF filing option, which required applicants to maintain an email address for receiving USPTO correspondence regarding the application and to file the application and related submissions through TEAS, will become the default, or “standard,” filing option and will be renamed “TEAS Standard” on the effective date of this rule. The filing fee for this option remains at \$275 per class. The TEAS Plus option also remains at \$225 per class, while the TEAS option under 37 CFR 2.6(a)(1)(ii) at \$400 per class is eliminated. However, the per-class fee of \$400 in § 2.6(a)(1)(ii), which is the

current filing fee for applications under section 66(a), is retained as the filing fee for such applications.

Under this rule, an application filed on paper under section 1 and/or section 44 will not receive a filing date unless it falls under one of the limited exceptions discussed below.

(2) Additional Processing Fee. Previously, the additional processing fee under § 2.6(a)(1)(v) applied to TEAS Plus and TEAS RF applications that failed to meet the requirements under § 2.22(a) or § 2.23(a) at filing, and to TEAS Plus and TEAS RF applications when certain submissions were not filed through TEAS or when the applicant failed to maintain a valid email address for receipt of communications from the Office. Under this rule, the processing fee applies only to TEAS Plus applications that fail to meet the amended filing requirements under § 2.22(a). All applicants and registrants, except those specifically exempted, are now required to electronically file any submissions in connection with an application or registration and to designate and maintain an email address for correspondence. A TEAS Plus or TEAS Standard (previously TEAS RF) applicant who meets the amended filing requirements, but thereafter seeks acceptance of a submission filed on paper, pursuant to new § 2.147, or a waiver of the requirement to file such submissions electronically, must then pay the relevant paper filing fee and the paper petition fee for any submission filed on paper.

(3) Submissions Required to Be Filed Through TEAS. This rule amends § 2.23 to also require that correspondence concerning a trademark application or registration under section 1, section 44, or section 66(a) be filed through TEAS, except for correspondence required to be submitted to the Assignment Recordation Branch or through ESTTA.

Although all correspondence is required to be filed electronically, the USPTO recognizes that there may be certain circumstances when a paper filing is necessary. For those instances, the Office codifies a new regulatory section, at 37 CFR 2.147, which sets out a procedure for requesting acceptance of paper submissions under particular circumstances. This section is discussed below in the explanation of the limited exceptions to the amended requirements.

Although this rule requires correspondence to be filed through TEAS, current USPTO practice regarding informal communications is unchanged. Thus, for example, an applicant or an applicant's attorney may still conduct informal communications with an examining attorney regarding a particular application by telephone or email. *See* Trademark Manual of Examining Procedure (TMEP) § 709.05.

(4) Email Correspondence Address. This rule amends §§ 2.21, 2.23, and 7.4 to require that applicants and registrants provide a valid email address for themselves and any appointed practitioner for receipt of correspondence from the USPTO. Thus, except in the case of nationals from exempted treaty countries, as discussed below, the USPTO's required method of corresponding with applicants and registrants is via Office actions and notices sent to the designated email address. If the email transmission were to fail because, for example, the applicant or registrant provided an incorrect email address, the recipient's mailbox is full, or the email provider has a service outage, the USPTO will not attempt to contact the correspondent designated pursuant to § 2.18(a) by other means. Instead, pursuant to amended § 2.23(d), the applicant or registrant is responsible for monitoring the status of the application or registration using the USPTO's Trademark Status and Document Retrieval (TSDR) system, which displays any USPTO Office

actions and notices that have issued, any submissions properly filed with the USPTO, and any other actions taken by the USPTO.

As noted above, applications under section 66(a) are processed and transmitted electronically to the USPTO from the IB. These applications do not include an email address for receiving USPTO correspondence, and the USPTO does not anticipate the IB will update its systems to include email addresses prior to implementation of this rule. In addition, only 2.9% of Madrid applications were approved for publication upon first action in fiscal year 2017. Therefore, the USPTO believes it is appropriate to waive the requirement for an email address prior to publication in this limited situation and until such time as the IB's systems are updated. However, Madrid applicants are subject to the requirements under §§ 2.23(b) and 2.32(a)(2), (4) to file all submissions electronically and to provide an email address on such submissions for receipt of correspondence from the USPTO.

Under § 2.18(c), an applicant, registrant, or party to a proceeding must maintain a current and accurate correspondence address for itself and its qualified practitioner, if one is designated.

(5) Changes from the Proposed Rule. The USPTO further amends § 2.22(a) by revising amended paragraph (a)(3) to limit the requirement for the names and citizenship of general partners to domestic partnerships and to add a requirement for the names and citizenship of active members of domestic joint ventures. These changes are added for consistency with current §§ 2.32(a)(3)(iii) and (iv). The USPTO also revises § 2.22(a)(4) to set out the requirements for sole proprietorships in order to further clarify the requirements for TEAS Plus applicants at filing.

The USPTO amends § 2.32(a)(3)(i) to require the applicant's legal entity type in addition to its citizenship and adds § 2.32(a)(1)(v) to require the state of organization of a sole proprietorship and the name and citizenship of the sole proprietor. These requirements are added for consistency with current § 2.22(a)(2) and new § 2.22(a)(4).

The USPTO further amends § 2.56(a) to include cross references to § 2.160 and § 7.36 and also amends § 2.56(b) and (c) to update these paragraphs with criteria for electronic submissions and better conform them to existing requirements in the Trademark Act and precedential case law for specimens of use, including that webpages must show the URL and access or print date. The amendments also more clearly conform the rule language to the statutory requirements for use in commerce by requiring that the specimen show use of the mark placed on the goods, on containers or packaging for the goods, or on labels or tags affixed to the goods.

The USPTO further amends § 2.147(b)(2) to require a copy of the previously mailed paper submission since the USPTO will not process the original submission and will destroy it after 90 days. This requirement is analogous to the requirements in §§ 2.64(a)(2)(i), 2.197(b)(2), and 2.198(e)(2) for a copy of previously submitted correspondence in order to establish timeliness.

The USPTO further amends § 7.25 to delete the proposed cross reference to § 2.198 and to delete the cross reference to § 2.197 since these sections could be applicable to extensions of protection in some circumstances.

Limited Exceptions for Paper Submissions: As discussed below, the USPTO will permit paper submissions of applications and correspondence in limited situations. This rule establishes a process for filing paper submissions in such situations.

(1) International Agreements: The United States (U.S.) is a member of both the Trademark Law Treaty (TLT) and the subsequent Singapore Treaty on the Law of Trademarks (STLT), which treaties constitute two separate international instruments that may be ratified or acceded to independently by member countries. One provision of TLT mandates that its members accept paper trademark applications from nationals of other TLT members. STLT, on the other hand, allows its members to choose the means of transmittal of communications, whether on paper, in electronic form, or in any other form. This incongruity between the treaties was addressed in Article 27(2) of STLT, which provides that any Contracting Party to both STLT and TLT shall continue to apply TLT in its relations with Contracting Parties to TLT that are not parties to STLT. Accordingly, nationals of TLT members that are not also members of STLT at the time of submission of the relevant document to the USPTO are not required to file applications electronically or receive communications from the USPTO via email, nor are they required to submit a petition with a paper filing, until such time as their country joins STLT. Currently, the USPTO must accept paper trademark applications from nationals of the following countries: Bahrain, Bosnia and Herzegovina, Burkina Faso, Chile, Colombia, Costa Rica, Cyprus, Czech Republic, Dominican Republic, Egypt, El Salvador, Guatemala, Guinea, Honduras, Hungary, Indonesia, Monaco, Montenegro, Morocco, Nicaragua, Oman, Panama, Slovenia, Sri Lanka, Trinidad and Tobago, Turkey, and Uzbekistan.

(2) Specimens for Scent, Flavor, or Other Non-Traditional Marks: This rule allows for the separate submission of physical specimens when it is not possible to submit the specimens using TEAS because of the nature of the mark. For example, if the

application or registration is for a scent or flavor mark, because the required specimen must show use, or continued use, of the flavor or scent, it cannot be uploaded electronically. In that situation, the applicant may submit the application through TEAS and indicate that it is mailing the specimen to the USPTO. In these circumstances, all other requirements of this rulemaking apply. However, the applicant or registrant is not required to submit a petition requesting acceptance of a specimen filed on paper or waiver of the requirement to file the specimen electronically. This exception does not apply to specimens for sound marks, which can be attached to the TEAS form as an electronic file.

(3) Petition to Accept a Paper Submission: This rule includes a new regulatory section titled “Petition to the Director to accept a paper submission,” which is codified at § 2.147. Under this section, an applicant or registrant may file a petition to the Director requesting acceptance of a submission filed on paper in three situations.

Under new § 2.147(a), the petition may be submitted if TEAS is unavailable on the date of the deadline for the submission specified in a regulation in parts 2 or 7 of this chapter or in a section of the Act. Under this provision, the applicant or registrant is required to submit proof that TEAS was unavailable because a technical problem, on either the USPTO’s part or the user’s part, prevented the user from submitting the document electronically. Generally, if users receive an error message the first time they attempt to submit a filing electronically, the USPTO expects that they will try to resolve any failures due to user error. In situations where the inability to submit the filing was not due to user error, the USPTO encourages users to try to submit the document again electronically before resorting to the paper petition process.

The second scenario applies to the specific documents with statutory deadlines identified in new § 2.147(b) when such a document was timely submitted on paper, but not examined by the Office because it was not submitted electronically in accordance with § 2.21(a) or § 2.23(a). The Office will issue a notice informing the applicant, registrant, or petitioner for cancellation that the paper submission will not be processed or examined because it was not submitted electronically. The applicant, registrant, or party may file a petition to request that the timely filed paper submission be accepted only if the applicant, registrant, or party is unable to timely resubmit the document electronically by the statutory deadline.

Finally, under new § 2.147(c), when an applicant or registrant does not meet the requirements under § 2.147(a) or (b) for requesting acceptance of the paper submission, the applicant or registrant may petition the Director under § 2.146(a)(5), requesting a waiver of § 2.21(a) or § 2.23(a) and documenting the nature of the extraordinary situation that prevented the party from submitting the correspondence electronically. The Office addresses petitions under § 2.146(a)(5) on a case-by-case basis because the assessment of what would qualify as an extraordinary situation depends on the specific facts and evidence presented.

With respect to USPTO technical problems that render TEAS unavailable, the USPTO intends to continue to follow its current approach. For example, when verifiable issues with USPTO systems prevent electronic filing for extended periods, the Office has waived non-statutory deadlines on petition, such as the deadline for response to a post-registration Office action, as well as petition fees. Such measures help avoid negatively impacting applicants and registrants in the event of USPTO technical problems. Because

the impact of technical problems varies depending on the specific facts, the USPTO cannot provide advance guidance about all possibilities or specific measures the USPTO may take in the future. Moreover, applicants and registrants must be mindful of the fact that statutory deadlines, such as those for submission of a statement of use or an affidavit or declaration of use under section 8 or section 71, cannot be waived. The USPTO strongly encourages applicants and registrants to ensure that they are able to timely submit the relevant document by mail using the certificate of mailing or Priority Mail procedures in § 2.197 and § 2.198 in the event of an unexpected technical problem to avoid missing a statutory deadline.

Furthermore, the inability to submit an application or submission electronically due to USPTO regularly scheduled system maintenance generally does not qualify for relief under new § 2.147 or as an extraordinary situation under § 2.146. The USPTO routinely performs system maintenance between midnight and 5:30 a.m. Eastern Time on weeknights and at all hours on Saturdays, Sundays, and holidays. Advance notice of the maintenance is generally posted on the USPTO Systems Status and Availability page on the USPTO website.

(4) Postal-service Interruptions or Emergencies. The Office intends to continue the approach it has employed when there has been a postal-service interruption or emergency related to a natural disaster. In such events, the Office has generally waived certain requirements of the rules for those in the affected area, such as non-statutory deadlines and petition fees. The Office also issues notices regarding the specific procedures to be followed in such circumstances and posts the notices on the “Operating Status” page of the USPTO website.

(5) Applications and Post-Registration Maintenance Documents Filed Prior to the Effective Date of this Rule. Paper, TEAS Regular, and Madrid applications filed prior to the effective date of this rule are not subject to the requirements to provide an email address for the applicant and its attorney, if represented, or to communicate with the USPTO electronically. Such applications are “grandfathered” under the prior rules until the application registers or is abandoned and cannot be revived or reinstated pursuant to 37 CFR 2.64, 2.66, or 2.146. Similarly, post-registration maintenance documents submitted prior to the effective date of the rule are not subject to the requirements and are grandfathered under the prior rules until the document has been accepted or the registration has been cancelled or expired and cannot be revived or reinstated pursuant to 37 CFR 2.64, 2.66, or 2.146.

However, on the effective date of this rule, because all new applications and post-registration maintenance documents are required to be filed electronically through TEAS, all TEAS forms will be updated to require the applicant’s or registrant’s email address and the email address of applicant’s or registrant’s attorney, if represented. Therefore, if a grandfathered applicant or registrant files a TEAS document after the effective date of this rule, the TEAS form will not validate for submission without the email address(es) being provided. Furthermore, if such an applicant, registrant, or attorney chooses to correspond electronically with the Office using one of the TEAS forms, the USPTO will presume that email communication is authorized and will send all future correspondence to the email address of the applicant, registrant, or attorney, as appropriate.

Applicants who filed an application prior to the effective date of the rule using the TEAS RF or TEAS Plus option are currently subject to the requirement to correspond

electronically with the USPTO, as well as all the other requirements in current § 2.22(a)-(b) and § 2.23(a)-(b). After the effective date of this rule, if a TEAS Plus or TEAS RF applicant submits a response to an Office action or other document on paper, the applicant will no longer be charged the additional processing fee under prior § 2.22(c) or § 2.23(c), but must submit a petition requesting acceptance of the paper filing under § 2.146 or § 2.147, as appropriate.

Requirements for Paper Submissions: Because paper submissions are permitted in the limited circumstances described above, the current rules addressing the requirements for paper submissions are retained and modified, as necessary, for consistency with the other revisions in this rulemaking. In addition, the rules governing the certificate-of-mailing and Priority Mail Express® procedures, 37 CFR 2.197 and 2.198, are amended to make filing with a certificate of mailing or via Priority Mail Express® available for all submissions, including new applications, on the rare occasions when filing on paper is permitted. This rule also simplifies how the filing date of a submission utilizing these procedures is determined. Streamlining the requirements for filing with a certificate of mailing or via Priority Mail Express® provides greater clarity to parties who seek to use these procedures and make the rules easier to administer for the Office. Although the certificate-of-mailing and Priority Mail Express® procedures are retained, facsimile transmissions, which are currently permitted for certain types of trademark correspondence, are not permitted under this rule for any applications or submissions. Continuing to accept fax transmissions would be counterproductive to maximizing end-to-end electronic processing because such submissions require manual processing similar to paper submissions.

Proposed Rule: Comments and Responses

The USPTO published a proposed rule on May 30, 2018, at 83 FR 24701, soliciting comments on the proposed amendments. In response, the USPTO received comments from four groups and ten individual commenters, representing law firms, organizations, individuals, and other interested parties. Some commenters expressed general support for the amendments, while raising concerns or providing suggestions about particular provisions. Other commenters objected to the amendments mandating electronic filing because of concerns about the stability and usability of the USPTO's current electronic filing systems or the possibility that some parties may not have adequate access to the internet. In addition, some commenters objected to the requirement that an email address be provided for correspondence, because of concerns that this would be burdensome to applicants or that the public availability of email addresses will be misused by third parties engaging in scams or unwanted solicitations. Similar or related comments have been grouped together and summarized below, followed by the USPTO's responses. All comments are posted on the USPTO's Web site at <https://www.uspto.gov/trademark/trademark-updates-and-announcements/comments-proposed-rulemaking-related-changes-trademark>.

Comment: Several commenters objected to the requirement to file submissions electronically because they believe it will adversely affect parties who do not have adequate internet access or are otherwise unable to file electronically.

Response: The USPTO appreciates the concerns raised in these comments and has given them careful consideration. As noted above, more than 99% of all initial applications based on section 1 and/or section 44 of the Act are now filed electronically.

For example, in fiscal year 2018, a total of 468,926 applications were filed, with only 144 applications filed on paper. Accordingly, the USPTO has determined that, as a general matter, the requirement to file all submissions electronically would not be impracticable or burdensome for the USPTO's customers, most of whom already file electronically.

Customers who do not have personal access to the internet have the option to use the internet at one of the 85 Patent and Trademark Resource Centers (PTRC) around the U.S. to electronically file submissions with the USPTO. A PTRC is part of a nationwide network of public, state, and academic libraries designated by the USPTO to support the public with federal trademark- and patent-filing assistance. Although PTRC representatives are not attorneys and cannot provide legal advice, they can provide access to USPTO resources and explain the application process and fee schedule. Public libraries provide another resource for parties without internet access. According to the American Library Association Fact Sheet 26, "Internet Access and Digital Holdings in Libraries," 98% of libraries offer free public internet access and 76% of libraries assist patrons in using online government programs and services (<http://www.ala.org/tools/libfactsheets/alaibraryfactsheet26>; accessed Sept. 24, 2018). Applicants, registrants, or parties also have the option to hire an attorney to file electronically on their behalf. Finally, if an extraordinary situation requires a particular applicant, registrant, or party to file on paper, the rule allows such submissions to be considered on petition by the USPTO on a case-by-case basis.

Comment: A commenter suggested that the USPTO has already sufficiently advanced its objective of electronic filing by increasing the fees associated with paper filing.

Response: As noted above, the USPTO previously revised its rules to increase fees for paper filings to bring the fees nearer to the cost of processing the filings and to encourage customers to use lower-cost electronic options. Despite these fee increases, approximately 12% of applications and registrations under section 1 and/or section 44 of the Act still involve some paper processing. Fee increases have not been effective in eliminating the volume of non-application paper submissions. Therefore, the USPTO has determined that mandatory electronic filing is necessary to attain, as closely as possible, its goal of end-to-end electronic processing.

Comment: The USPTO received several comments regarding its electronic systems. Some commenters expressed concerns that the USPTO's current electronic systems, including the payment system, are not sufficiently reliable to support a mandate of electronic filing, noting that removing the paper filing option eliminates a failsafe way to file if the internet or the electronic filing system is unavailable. Other commenters suggested that the usability of TEAS forms should be improved and stated that TEAS currently lacks forms to address all filing situations. Some commenters noted that TEAS sometimes will not allow submissions due to erroneous status information in the USPTO's electronic record. Relatedly, a commenter urged that any rulemaking that would remove the paper filing option should be accompanied by the provision of a "none of the above" TEAS form to address the circumstances when the internet or TEAS is unavailable, and that every TEAS form should include a "miscellaneous" section in which free-text comments and evidence can be provided. One commenter asked whether fax transmission will remain as an alternative method for filing if the electronic system is not available and suggested that the USPTO either provide an alternative method that is

electronic but not tied to the TEAS system or allow for a deadline extension when the TEAS system is not operational at the time of deadline. Finally, a commenter suggested that the USPTO implement contingency servers and systems that would serve as a backup to the USPTO's primary electronic systems and reduce the need for paper filings if the primary systems experience an outage.

Response: The USPTO recognizes that the successful implementation of mandatory electronic filing requires reliable, well-functioning electronic filing and payment systems. To that end, the USPTO is actively engaged in enhancing the Office's systems to significantly improve reliability and stability with the result of reducing unscheduled outages and instabilities and mitigating any that do occur. For example, the USPTO recently upgraded the main server that houses the TEAS and payment systems, which will significantly enhance reliability and responsiveness.

The USPTO also acknowledges the comments concerning the general usability of TEAS forms and is enhancing its electronic systems to accommodate the requirements of mandatory electronic filing, and also plans to improve the overall functionality of the TEAS forms. In addition, remedies are already available to customers who are unable to file a TEAS submission because of incorrect status information in the USPTO electronic record. To request assistance, such as correction of the status information so that TEAS will allow submission of the appropriate form, customers may call or email the USPTO. Furthermore, when a party is unable to file electronically because of an extraordinary situation, § 2.147(c) allows the party to petition the Director under § 2.146(a)(5), requesting that the Director waive § 2.23(a) and accept a paper submission.

Regarding the commenter's request to retain fax transmission, the rule removes this submission option. As noted above, continuing to accept fax transmissions would be counterproductive to maximizing end-to-end electronic processing because such submissions require manual processing similar to paper submissions. If a significant outage or other emergency occurs, the USPTO may consider waiving the relevant rules to accept certain submissions by fax or another means for specific purposes.

Regarding the comment requesting the rule allow for a deadline extension when the TEAS system is not operational at the time of deadline, the USPTO has previously waived non-statutory deadlines on petition when verifiable issues with USPTO systems prevented electronic filing for extended periods. The USPTO may make this option available, if appropriate. However, the USPTO has no authority to extend deadlines set by statute.

Comment: One commenter who assists "low-wealth entrepreneurs" with trademark matters noted that, while most of these entrepreneurs have computer access and an email address, some have little understanding of the application and prosecution process and the rules governing this process. This commenter expressed concern that these entrepreneurs would be required to handle email communications from the USPTO that may significantly impact their ability to conduct their business. The commenter urged that USPTO communications be written in a way that ensures understanding by a lay person. Other commenters expressed concerns that the current TEAS forms are too complicated for the lay person, with one commenter suggesting that the USPTO permit applicants to file already completed applications in .pdf form.

Response: The USPTO is dedicated to making its communications comprehensible for all customers, but recognizes that the trademark application process is legal in nature and can be complex and difficult to understand for some applicants, regardless of whether submissions are filed on paper or electronically. Filing a trademark application with the USPTO starts a legal proceeding that is governed by U.S. law. Therefore, it may be advisable for an applicant to hire a qualified trademark attorney licensed to practice law in the United States who can give legal advice, help avoid pitfalls with the filing and prosecution of an application, and help enforce trademark rights. Applicants may also seek to avail themselves of free or reduced-fee legal services through such resources as the USPTO's Law School Clinic Certification Program, the list of Pro Bono IPL Resources provided by the American Bar Association, and the International Trademark Association trademark pro bono clearinghouse pilot program.

Further, the USPTO believes that the requirement to file electronically benefits those applicants who are unable to hire an attorney and must represent themselves. Specifically, electronic filing costs less than paper filing, especially if the lower-fee TEAS Plus application filing option is utilized. In addition, electronic filing simplifies and increases the efficiency of the application process for applicants. Those who file electronically are more likely to provide the necessary information in their submissions because the USPTO can update its electronic forms to specifically tailor the requirements for a particular submission and require that the information be validated prior to submission. Consequently, preparing and submitting an application or related document through TEAS is likely to result in a more complete submission and take less time than preparing and mailing the paper equivalent. In addition, the USPTO is dedicated to

providing future enhancements to its online filing systems to further simplify the process for applicants by, for example, providing more informative, interactive, and user-friendly forms.

Regarding the comment suggesting that applicants be permitted to file completed applications in .pdf form, this approach would be counterproductive to maximizing end-to-end electronic processing because submissions in .pdf form require manual processing similar to paper submissions.

Comment: A commenter noted that the electronic filing requirement may lead to librarians being asked legal questions by those filing electronic submissions with the USPTO using a library computer and that referring these patrons to a PTRC might not be an effective solution to this problem.

Response: The USPTO acknowledges the possibility that library patrons may ask librarians legal questions about the trademark process, but does not believe this is an impediment to implementing mandatory electronic filing. The USPTO presumes that if a librarian is asked for legal information regarding trademark law, or any other area of law, he or she would direct the patron to a local bar association or other appropriate resource. As noted above, filing a trademark application with the USPTO starts a legal proceeding that is governed by U.S. law. It is therefore advisable for their patrons to seek legal guidance from a qualified private trademark attorney.

If a patron has questions regarding the trademark application process, a librarian can direct the patron to the USPTO website for information, including the email address and toll-free phone number for the Trademark Assistance Center. In addition, although PTRC library representatives cannot provide legal advice, they can: (1) provide access to

USPTO resources such as search systems and demonstrate how to use search tools to conduct a trademark search; (2) direct patrons to website information and explain the application process/timeline and fees; and (3) offer classes on intellectual property in some locations.

Comment: One commenter recommended that the proposed rule include information on the economic impact on entities who still choose the paper filing option and also provide means to reduce the economic burden for that group rather than impose additional costs.

Response: The USPTO believes that the overall economic impact on affected parties will be minimal. As noted above, in fiscal year 2018, more than 99% of all initial applications based on section 1 and/or section 44 of the Act were filed electronically - only 144 out of 468,926 applications were filed on paper. Thus, as a practical matter, almost all USPTO customers who may use the USPTO's electronic systems to file their trademark applications have already done so. Moreover, under the current system TEAS filers are subsidizing those who file on paper because current fees for paper filers do not cover the full cost of processing paper filings. The change to mandatory electronic filing also will improve the quality of Trademark applications and registrations because paper filings require manual uploading of scanned copies into USPTO electronic systems and manual data entry of information in the documents, which results in data-entry errors.

Thus, given the additional costs associated with filing applications and related submissions by paper, including higher fees, a requirement to file electronically will likely result in reduced costs overall for most customers who previously filed on paper.

Comment: Some commenters objected to the changes to §§ 2.21, 2.23, and 7.4, requiring the provision of an email address for applicants and registrants. One commenter noted that, when an applicant or registrant is represented by counsel, and counsel has provided a correspondence email address, the rule changes impose additional burdens on both the trademark owner and its counsel. Another commenter stated that the TEAS system appears to be open to abuse and fraud, and some commenters were concerned that the requirement to provide the applicant's email address for correspondence would lead to an increase in scams and misleading solicitations by third parties. One commenter had similar concerns about applicants' telephone numbers.

Response: The amended rules include a requirement for the applicant's email address, even when the applicant is represented by an attorney. This requirement ensures that the USPTO has an electronic means of contacting the applicant if the attorney's email address cannot be used, such as when the attorney is suspended or excluded from practice before the USPTO or when representation otherwise ceases. The USPTO does not undertake double correspondence with both the applicant or registrant and the attorney of record. Accordingly, if an applicant or registrant is represented by an attorney, the USPTO corresponds and conducts business only with the attorney. Once representation ceases, under this rule, the USPTO will correspond only with the applicant or registrant. Therefore, the applicant or registrant must provide an email address belonging to the applicant or registrant itself for receipt of correspondence from the USPTO in such a circumstance.

The USPTO appreciates the commenters' concerns that scams and misleading solicitations may increase if the email addresses required under these rules are publicly available in the USPTO's systems. Currently, all owner email addresses that appear in the "status" view of USPTO records are masked from public view. In addition, the USPTO plans to similarly mask from public view in application and registration files the correspondence email addresses of applicants and registrants who are not represented by counsel to reduce the likelihood that they will be subjected to scams and other unwanted solicitations. The contact information of attorneys appearing in USPTO records, including email addresses and telephone numbers, will remain publicly available and viewable, as this information is publicly available from other sources already and could be used for legitimate purposes by third parties.

Comment: One commenter stated that, to the extent that the USPTO does not already comply with the European Union's General Data Protection Regulation (GDPR), mandating the provision of email addresses of individuals associated with applicants and registrants, will subject the USPTO to this regulation, as well as to the penalties and obligations associated with any data breach.

Response: The USPTO is aware of the GDPR and has taken into account any implications it might have for the implementation of these amended rules.

Comment: Regarding the proposed amendment of § 2.151 to state that the USPTO will issue "to the owner" a certificate of registration, one commenter asked how the Office will know who "the owner" is, noting that, at most, the Office will know only who the owner of record is. This commenter also noted that, to avoid the need for future rulemaking, the USPTO should consider broadening the requirement for an email

address, so that the requirement also encompasses an “alphanumeric identifier that is capable of receiving electronic communications.” The commenter then suggested that the ability of users to input an email address into a TEAS form should be restricted to forms for which doing so actually updates the information.

Response: Under amended § 2.151, a certificate of registration will be issued to the owner of record, as indicated in the USPTO electronic record at the time the certificate is issued.

The USPTO appreciates the suggestion to use broader terminology than “email address,” but has determined that “email address” is sufficiently accurate and will serve the intended purpose under the rule. The USPTO also appreciates the suggestion regarding the ability to input and update email addresses in TEAS forms, and will take that feedback into account when considering enhancements to TEAS.

Comment: One commenter stated the USPTO should provide another filing mechanism to ensure that customers have access to protect their trademark rights without having to incur the uncertainty or additional fees and time associated with filing a separate petition, if having to file on paper. This commenter suggested that a more predictable and desirable remedy in this situation may include submitting with the relevant filing a declaration or other statement attesting to the outage, lack of access, or other reason for not filing electronically, and that the filer may also include evidence of the problem, such as a screen shot. The commenter noted that, to ease the administrative burden on the USPTO and add certainty for applicants and counsel as to permissible exceptions, any USPTO form could acknowledge clear exceptions through use of a box to be checked, but for unusual or unique circumstances, a free-form text box could be

provided in the relevant form. Relatedly, one commenter recommended that the rules be modified to provide specific examples of documentation the user can provide to satisfy the USPTO's requirement for proof that TEAS was unavailable for electronic filing because of a "technical problem." This commenter suggested that such documentation might include screenshots showing the time and date and the error statement encountered by the user, or a signed declaration under 37 CFR 2.20 indicating the circumstances of the unsuccessful electronic filing.

Response: The USPTO believes that a petition describing the reasons for a paper submission is the most efficient and effective mechanism for providing the information necessary to enable the USPTO to determine whether the submission should be accepted. However, the USPTO also agrees with the commenters that the petition process may be simplified by the use of a standard preformatted petition form, listing the most common reasons for requesting acceptance of a paper submission. The user could complete the form by selecting the appropriate reason and include the completed form with the paper submission. The USPTO is working to make such a form available before this rule takes effect.

The USPTO appreciates the suggestion that the rules should be modified to provide specific examples of documentation a user can provide to satisfy the USPTO's requirement for proof that TEAS was unavailable for electronic filing because of a "technical problem." However, considering the type and nature of evidence that may suffice will differ depending on the circumstances, the USPTO believes it is preferable to enact a rule that provides flexibility as to the type of evidence the USPTO may accept as

proof. However, the Office will consider adding such examples in other USPTO materials, such as webpages or the TMEP, to provide guidance.

Comment: One commenter urged the USPTO to continue its practice of attempting to contact the correspondent by other means if a transmission to the email address of record fails, including physical correspondence by mail. This commenter noted that email addresses frequently change due to companies adopting new domain names and staffing changes, and that technical issues due to hardware malfunction, software bugs, or malicious cyberattacks increase the chances of electronic communication being disrupted.

Response: Although the USPTO previously attempted to contact the correspondent by other means if an email transmission failed and, in some cases, sent a paper copy of the correspondence to the physical address of record, it no longer does so. As the commenter indicated, email transmissions may fail for a variety of reasons outside of the USPTO's control. Even if the number of failed transmissions are relatively low, attempting to contact the applicant or registrant in every instance is administratively burdensome to the USPTO. In addition, continuing to send paper correspondence after implementing mandatory electronic filing would be counterproductive to the goal of maximizing end-to-end electronic processing.

Moreover, under § 2.18(c), applicants and registrants are required to maintain a current and accurate correspondence email address, and to monitor the status of their applications or registrations for any notices issued or action taken by the USPTO, in accordance with § 2.23(d).

Comment: One commenter stated that, for a paper filed during a time when TEAS is unavailable, a petition requirement is unneeded and burdensome because the USPTO will usually already be aware of instances when its filing system is broken. This commenter suggested that, when the USPTO is unaware of an outage, the USPTO could respond to a paper filing with a request for a showing by the filer as to the nature and time of the outage. Some commenters objected to any requirement that the filer postpone a filing until such time as a TEAS outage is repaired and another commenter stated that an applicant or registrant should not be required to wait until the day of the deadline to be eligible for an exception to the electronic filing requirement when TEAS is unavailable.

Response: When a paper submission is necessary because of an unscheduled TEAS outage or some other technical problem, the USPTO believes that the mechanism of a petition, which permits inclusion of a description of the reasons for the paper submission, is the only appropriate mechanism for providing the information necessary to enable the USPTO to determine whether the particular submission should be accepted.

Regarding known TEAS outages, the USPTO intends to continue to follow the approach employed in the past. For example, when verifiable issues with USPTO systems prevent electronic filing for extended periods, the USPTO has waived non-statutory deadlines on petition, such as the deadline for response to a post-registration Office action, as well as petition fees. Even when the USPTO is aware of an outage, a petition would typically still be required, because the party requesting relief would need to establish that the outage prevented electronic filing of the particular submission. However, because the impact of technical problems varies depending on the specific

facts, the Office cannot provide advance guidance about all possibilities or specific measures the USPTO may take in the future.

The USPTO acknowledges the commenters' concerns about waiting until the date of the deadline to be eligible for an exception to the requirement to file electronically. However, this requirement applies only if the party is relying on § 2.147(a), which provides that the petition may be submitted if TEAS is unavailable on the date of the deadline for the submission specified in a regulation in parts 2 or 7 of this chapter or in a section of the Act.

If an extraordinary situation prevents an applicant or registrant from waiting until the deadline for a submission to be eligible for an exception to the requirement to file electronically, or otherwise postponing a TEAS submission, § 2.147(c) provides that the applicant or registrant may petition the Director under § 2.146(a)(5), requesting a waiver of § 2.21(a) or § 2.23(a) and documenting the nature of the extraordinary situation that prevented the party from submitting the correspondence electronically at the relevant time. Because petitions for extraordinary situations are not automatically granted, and the assessment of what would qualify as an extraordinary situation depends on the specific facts, the Office will address particular situations on a case-by-case basis.

Discussion of Regulatory Changes

The USPTO amends § 2.2 to revise paragraph (e) to include the abbreviation "USPTO" and paragraphs (f) and (g) to indicate that the definitions of "TEAS" and "ESTTA" include all related electronic systems required to complete an electronic submission through each and to delete the URLs. The USPTO also adds: § 2.2(q), defining "ETAS;" § 2.2(r), defining "Eastern Time;" § 2.2(s), defining "electronic

submission;” and § 2.2(t) defining “USPS.” The paragraph designations (q) through (t) do not correspond to the proposed changes published at 83 FR 24701. The revisions to these designations reflect additional changes published in an intervening rule published at 84 FR 31498.

The USPTO amends § 2.6 to clarify that § 2.6(a)(1)(ii) applies to applications filed under section 66(a) of the Act. The USPTO also changes the wording “Reduced Fee (RF)” to “Standard” and deletes the reference to § 2.23 in § 2.6(a)(1)(iii), rewords § 2.6(a)(1)(iv) for clarity, and deletes the reference to § 2.23(c) in § 2.6(a)(1)(iv).

The USPTO deletes the wording “and attorney” and the reference to TEAS in current § 2.17(d)(1), because it is unnecessary in view of amended § 2.23(a), redesignates § 2.17(d)(1) as § 2.17(d), and deletes § 2.17(d)(2) as unnecessary as a result of updates to the electronic form for filing a power of attorney.

The USPTO amends the title to § 2.18(a) to “Establishing the correspondent” and adds introductory text indicating that the following paragraphs set out the procedures by which the Office will determine the address to which correspondence will be sent. The USPTO revises § 2.18(a)(1) to define when the Office will send correspondence to the applicant, registrant, or party to a proceeding and § 2.18(a)(2) to define when the Office will send correspondence to an attorney. The USPTO also deletes current paragraphs (a)(3)-(a)(5), redesignates current § 2.18(a)(6) as § 2.18(b), adds the title “Ex parte matters,” and rewords the text for clarity, and deletes current paragraph (a)(7). The USPTO redesignates current § 2.18(b) as § 2.18(c), changes the title to “Maintaining and changing the correspondence addresses,” and deletes current § 2.18(b)(1)-(4). The USPTO redesignates current § 2.18(c)(1) as § 2.18(d), deletes the word “Trademark” in

the first sentence, deletes the second and third sentences in current § 2.18(c)(1), clarifies that the Office will change the address if a new address is provided, adds a cross reference to § 2.18(a), and deletes current § 2.18(c)(2).

The USPTO amends § 2.21(a) to require that applications under section 1 or section 44 be filed through TEAS, to require the domicile and email addresses for each applicant, and if the applicant is represented by a qualified practitioner, to require the postal and email addresses for the practitioner. The USPTO rewords § 2.21(a)(5) for clarity, rewords § 2.21(b) and includes a reference to § 2.21(c), and adds § 2.21(c), which sets out an exemption for certain countries.

The USPTO amends § 2.22(a) to specify that TEAS Plus applications must satisfy the requirements of § 2.21, to delete current paragraphs (a)(1), (a)(5), and (a)(6) and renumber the remaining paragraphs, to change “an individual” and “a juristic” to “each individual” and “each juristic” in redesignated paragraph (a)(2), to clarify that the requirement in redesignated paragraph (a)(3) applies to domestic partnerships and to add a requirement for the names and citizenship of the active members of a domestic joint venture, to add a requirement for the citizenship of a sole proprietorship and for the name and citizenship of the sole proprietor to redesignated paragraph (a)(4), to correct the cross reference in redesignated paragraph (a)(8) to § 2.6(a)(1)(iv), to delete the first sentence and the reference to a particular format in redesignated paragraph (a)(10), and to delete the URL in redesignated paragraph (a)(11). The USPTO revises § 2.22(b) to indicate that the applicant must comply with amended § 2.23(a) and (b), to delete § 2.22(b)(1) and (2), and to delete the second sentence in § 2.22(c).

The USPTO amends the title of § 2.23 to “Requirement to correspond electronically with the Office and duty to monitor status” and deletes the current text of the section. The USPTO revises § 2.23(a) to require that, unless stated otherwise, all trademark correspondence must be submitted through TEAS; revises § 2.23(b) to require that applicants, registrants, and parties to a proceeding provide and maintain a valid email correspondence address; revises current § 2.23(c) to set out an exemption for nationals of a country that has acceded to the Trademark Law Treaty, but not to the Singapore Treaty on the Law of Trademarks; and adds § 2.23(d) to indicate that applicants and registrants are responsible for monitoring the status of their applications and registrations.

The USPTO amends § 2.24(a) to clarify that only an applicant or registrant that is not domiciled in the U.S. may designate a domestic representative. The USPTO deletes § 2.24(a)(1)(i), redesignates § 2.24(a)(1)(ii) as § 2.24(b) and revises it to require an email and postal address for a designated domestic representative, and deletes § 2.24(a)(2). The USPTO redesignates § 2.24(a)(3) as § 2.24(c) and rewords it for clarity, and deletes current § 2.24(b).

The USPTO amends § 2.32(a)(2) to add a statement that if the applicant is a national of a country that has acceded to the Trademark Law Treaty, but not to the Singapore Treaty on the Law of Trademarks, the requirement to provide an email address does not apply. The USPTO amends § 2.32(a)(3)(i) to require the legal entity as well as the citizenship of the applicant(s), deletes “or” from § 2.32(a)(3)(iii), adds “or” to § 2.32(a)(3)(iv), and adds § 2.32(a)(3)(v) to require the state of organization of a sole proprietorship and the name and citizenship of a sole proprietor. The USPTO amends § 2.32(d) to add the word “the” before “fee.”

The USPTO amends § 2.56(a) to indicate that the specimen must show the mark as actually used in commerce for the identified goods or services and to add cross references to §§ 2.160 and 7.36. The USPTO amends § 2.56(b) and (c) to codify existing requirements for specimens. The USPTO amends § 2.56(d) to set out the requirements for submitting a specimen through TEAS, revises current § 2.56(d)(1) and (2) to set out the exceptions to the requirements, and deletes § 2.56(d)(3) and (4).

The USPTO amends the title of § 2.62 to “Procedure for submitting response,” revises § 2.62(a) slightly for clarity, and revises § 2.62(c) for consistency with amended § 2.23 and to add that responses filed via facsimile will not be accorded a date of receipt.

The USPTO amends § 2.111(c)(2) for consistency with § 2.147(b).

The USPTO amends § 2.146(a) to add the words “in a trademark case” and revises § 2.146(a)(2) and (4) to specify that the regulation applies to “parts 2, 3, 6, and 7” of Title 37.

The USPTO adds § 2.147 to set out the requirements for submitting a petition requesting acceptance of a paper submission.

The USPTO amends § 2.148 to clarify that it applies to “parts 2, 3, 6, and 7 of this chapter.”

The USPTO amends § 2.151 to indicate that the certificate of registration will issue to the owner, to reword the second and third sentences for clarity, and to change the wording “accompany” in the last sentence to “issue with.”

The USPTO amends § 2.162 to change the word “includes” to “issues with the certificate” and to add the wording “or section 71” after “section 8” for consistency with § 2.151.

The USPTO amends § 2.190(a) to clarify that the paragraph refers to paper documents, and to clarify that the stated mailing address is for documents to be sent by mail and that the address for hand delivery is the address for delivery by private courier or another delivery service. The USPTO amends § 2.190(b) to state that trademark documents filed electronically must be submitted through TEAS and that documents related to TTAB proceedings must be filed through ESTTA, and to delete the URLs. The USPTO rewords § 2.190(c) for clarity and to delete the mailing address and URL. The USPTO amends § 2.190(d) to add “certified” to the title and to delete the first sentence and the wording “or uncertified” in the second sentence and to change “should” to “must.” The USPTO corrects the mailing address in § 2.190(e).

The USPTO amends the title of § 2.191 to “Action of the Office based on the written record” and revises the section to state that all business must be recorded in writing, to reword for clarity, and to delete the last sentence.

The USPTO amends § 2.193(a)(2) and (b) to delete wording regarding submission of a photocopy or facsimile or by facsimile transmission. The USPTO amends § 2.193(c)(1) to change the wording “he or she” to “the signer,” and revises § 2.193(d) to require submission of the first and last name and the title or position of the signatory and to delete the wording “in printed or typed form” and the wording after “the signature.” The USPTO amends the introductory text of § 2.193(e) to clarify that documents must be signed as specified in paragraphs (e)(1) through (9). The USPTO amends the title and introductory text of § 2.193(e)(5) to add “or § 2.147” after the wording “§ 2.146.” The USPTO also deletes § 2.193(e)(10), rewords § 2.193(g)(1) for clarity, and revises § 2.193(g)(2) to change “correspondence” to “documents” and to delete the last sentence.

The USPTO amends the title of § 2.195 to “Filing date of trademark correspondence.” The USPTO deletes current § 2.195(a)-(d) and sets out the procedures for determining the filing date of electronic and paper submissions in § 2.195(a) and (b)(1) through (b)(2), indicates when the Office is closed in § 2.195(b)(3), indicates that email and facsimile submissions are not permitted in § 2.195(c), redesignates current § 2.195(e)(1) through (e)(2)(iii) as § 2.195(d)(1) through (3) and changes U.S. Postal Service and United States Postal Service to USPS. The USPTO deletes current § 2.195(e)(3).

The USPTO amends the title of § 2.197 to “Certificate of mailing.” The USPTO deletes current § 2.197(a) through (c) and sets out the requirements for obtaining a filing date based on a certificate of mailing in § 2.197(a), the procedure when correspondence is mailed in accordance with paragraph (a) of this section but not received by the Office in § 2.197(b), and the filing date when the certificate of mailing does not meet the requirements in § 2.197(c).

The USPTO deletes current § 2.198(a) through (f) and clarifies the filing date of correspondence submitted under this section in amended § 2.198(a) and (b) and the procedures when there is a discrepancy, error, or non-receipt in amended § 2.198(c)-(e).

The USPTO amends § 7.1(c) to indicate that the definition of TEAS includes all related electronic systems required to complete an electronic submission through TEAS and to delete a URL. The USPTO amends § 7.1(d) to add “or the abbreviation *USPTO*.”

The USPTO amends the title of § 7.4 to “International applications and registrations originating from the USPTO – Requirements to electronically file and communicate with the Office.” The USPTO amends § 7.4(a) to specify that all

correspondence relating to international applications and registrations originating from the USPTO must be submitted through TEAS and include a valid email correspondence address. The USPTO amends § 7.4(b) to require that applicants and registrants provide and maintain a valid email correspondence address and to delete current paragraphs (b)(1) and (b)(2). The USPTO amends § 7.4(c) to set out an exemption for nationals of a country that has acceded to the Trademark Law Treaty, but not to the Singapore Treaty on the Law of Trademarks and § 7.4(d) to set out the procedure if TEAS is unavailable or when there is an extraordinary situation, and to delete paragraphs (d)(1)–(d)(6). The USPTO also deletes § 7.4(e).

The USPTO amends § 7.11(a) to delete the word “either,” to add a cross reference to § 7.4(a), and to specify that the Office will grant a date of receipt to an international application typed on the official paper form issued by the IB if a paper submission is permitted under § 7.4(c) or accepted on petition pursuant to § 7.4(d). The USPTO also adds the word “and” to § 7.11(a)(10), deletes the word “and” from § 7.11(a)(11), and deletes § 7.11(a)(12).

The USPTO amends § 7.21(b) to delete the word “either,” to add a cross reference to § 7.4(a), and to specify that the Office will grant a date of receipt to a subsequent designation typed on the official paper form issued by the IB if a paper submission is permitted under § 7.4(c) or accepted on petition pursuant to § 7.4(d). The USPTO also adds the word “and” to § 7.21(b)(7), deletes the word “and” from § 7.21(b)(8), and deletes § 7.21(b)(9).

The USPTO revises § 7.25 to delete the reference to § 2.23 and replace it with a reference to § 2.22 and to delete the reference to § 2.197.

This rule revises sections of 37 CFR parts 2 and 7 that were revised in the final rule entitled *Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants*, published at 84 FR 31498 (July 2, 2019). The revisions published here supplement the changes implemented in that earlier rule and do not change the requirements for obtaining U.S. counsel. However, this rule has resulted in a few changes to the revisions that were made in the earlier rule. In this regard, USPTO in the earlier rule had revised § 2.32(a)(2); under that revision, an application would be required to include the “name and domicile address of each applicant.” In this rule, USPTO is amending § 2.32(a)(2) to require an application to also include the “email address of each applicant” (as discussed above, the requirement to provide an email address does not apply if the applicant is a national of a country that has acceded to the Trademark Law Treaty, but not to the Singapore Treaty on the Law of Trademarks). In addition, this rule includes a reorganization of § 2.22 (“Requirements for a TEAS Plus Application”), which was revised by the earlier rule, to streamline the regulations and improve clarity. As a result of this reorganization, paragraphs (a)(19), (20), and (21) of § 2.22 of the earlier rule are being redesignated – without change – as paragraphs (a)(17), (18), and (19). Also, the requirement for the applicant’s name and domicile address, which was in § 2.22(a)(1) of the earlier rule, is now a requirement of § 2.21(a)(1) of this rule, and applies to all applicants. Finally, we note that the regulatory revisions that were made in that earlier rule are going into effect on August 3, 2019, whereas the regulatory revisions in this rule are going into effect on October 5, 2019.

Rulemaking Requirements

A. Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Perez v. Mortg. Bankers Ass'n*, 135 S. Ct. 1199, 1204 (2015) (Interpretive rules “advise the public of the agency’s construction of the statutes and rules which it administers.” (citation and internal quotation marks omitted)); *Nat’l Org. of Veterans’ Advocates v. Sec’y of Veterans Affairs*, 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); *Bachow Commc’ns Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Perez*, 135 S. Ct. at 1206 (Notice-and-comment procedures are required neither when an agency “issue[s] an initial interpretive rule” nor “when it amends or repeals that interpretive rule.”); *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336-37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice” (quoting 5 U.S.C. 553(b)(A))). However, the Office has chosen to seek public comment before implementing the rule to benefit from the public’s input.

B. Regulatory Flexibility Act: For the reasons set forth herein, the Senior Counsel for Regulatory and Legislative Affairs, Office of General Law, of the USPTO has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will

not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

This rule amends the regulations to require that applications filed under section 1 or section 44 of the Act, and all submissions regarding an application or registration under section 1, section 44, and section 66(a), be filed electronically. The rule also requires that applicants, registrants, and parties to a proceeding maintain a valid email correspondence address and continue to receive communications from the Office by email. The rule applies to all applicants and registrants unless acceptance of a submission filed on paper or a waiver of the proposed requirements is granted on petition, the applicant/registrant is a national of a country to which the requirements will not apply, or the requirement to file electronically is otherwise excepted, as for certain types of specimens. Applicants for a trademark are not industry specific and may consist of individuals, small businesses, non-profit organizations, and large corporations. The USPTO does not collect or maintain statistics on small- versus large-entity applicants, and this information would be required in order to determine the number of small entities that would be affected by the proposed rule.

The burdens to all entities, including small entities, imposed by these rule changes will be minor procedural requirements on parties submitting applications or documents and communications in connection with an application or registration. The vast majority of users already file and prosecute applications electronically in response to previous initiatives to increase end-to-end electronic processing. For example, the USPTO amended its rules to encourage electronic filing through TEAS and email communication by establishing the TEAS Plus and TEAS RF filing options for applications that are based

on section 1 and/or section 44. *See* 37 CFR 2.6. The TEAS RF filing option is now the most popular filing option among USPTO customers, followed by TEAS Plus. These two filing options currently account for approximately 97% of all trademark applications filed under section 1 and/or section 44, and more than 99% of trademark applications under section 1 and/or section 44 in total are now filed electronically through TEAS, suggesting that most applicants are comfortable with filing and communicating with the USPTO electronically.

Furthermore, in January 2017, the USPTO revised its rules to (1) increase fees for paper filings to bring the fees nearer to the cost of processing the filings and encourage customers to use lower-cost electronic options and (2) require that all submissions to the TTAB be filed through ESTTA. As a result of these rule changes, the USPTO is now processing approximately 88% of applications filed under section 1 and/or section 44 electronically end to end.

The changes enacted herein do not impose any additional economic burden unless the applicant or registrant fails to file electronically. In such cases, the economic burden to the applicant or registrant would be the higher paper fee for the submission (if a fee is required) and the fee for the petition seeking acceptance of a submission filed on paper or a waiver of the requirement to file electronically. However, as mentioned above, since the vast majority of current users already file and prosecute applications electronically, the economic impact of filing on paper is expected to be small. Moreover, this rule will lead to a greater adoption of lower filing-fee options and therefore outweigh any cost burdens and likely save applicants and registrants money. For these reasons, this rule is not expected to have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs): This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

F. 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).

G. 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).

H. 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).

I. 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).

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

K. 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).

L. 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 United States Senate, the United States House of

Representatives, and the Comptroller General of the Government Accountability Office. The changes 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 notice is not expected to result in a “major rule” as defined in 5 U.S.C. 804(2).

M. Unfunded Mandates Reform Act of 1995: The changes set forth 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.*

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

O. 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 not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

P. Paperwork Reduction Act: This rulemaking involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The collection of information involved in this rule has been reviewed and previously approved by OMB under control numbers 0651-0009, 0651-0050, 0651-0051, 0651-0054, 0651-0055, 0651-0056, and 0651-0061. This rulemaking has an overall change on the public burdens within these approved collections including a reduction of 862 in burden hours and a reduction of \$5,175 in cost burdens.

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

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 7

Administrative practice and procedure, Trademarks.

For the reasons stated in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the Office amends parts 2 and 7 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

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

Authority: 15 U.S.C. 1113, 15 U.S.C. 1123, 35 U.S.C. 2, Section 10(c) of Pub. L. 112-

29, unless otherwise noted.

2. Amend § 2.2 by revising paragraphs (e), (f), and (g) and adding paragraphs (q) through (t) to read as follows:

§ 2.2 Definitions.

* * * * *

(e) The term *Office* or abbreviation *USPTO* means the United States Patent and Trademark Office.

(f) The acronym *TEAS* means the Trademark Electronic Application System and, as used in this part, includes all related electronic systems required to complete an electronic submission through TEAS.

(g) The acronym *ESTTA* means the Electronic System for Trademark Trials and Appeals and, as used in this part, includes all related electronic systems required to complete an electronic submission through ESTTA.

* * * * *

(q) The acronym *ETAS* means the Electronic Trademark Assignment System and, as used in this part, includes all related electronic systems required to complete an electronic submission through ETAS.

(r) *Eastern Time* means Eastern Standard Time or Eastern Daylight Time, as appropriate.

(s) The term *electronic submission* as used in this part refers to any submission made through an electronic filing system available on the Office's website, but not through email or facsimile transmission.

(t) The abbreviation *USPS* as used in this part means the U.S. Postal Service.

3. Amend § 2.6 by revising paragraphs (a)(1)(ii) through (v) to read as follows:

§ 2.6 Trademark fees.

(a) * * *

(1) * * *

(ii) For filing an application under section 66(a) of the Act, per class—\$400.00

(iii) For filing a TEAS Standard application, per class—\$275.00

(iv) For filing a TEAS Plus application under § 2.22, per class—\$225.00

(v) Additional processing fee under § 2.22(c), per class—\$125.00

* * * * *

4. Amend § 2.17 by revising paragraph (d) to read as follows:

§ 2.17 Recognition for representation.

* * * * *

(d) *Power of attorney relating to multiple applications or registrations.* The owner of an application or registration may appoint a practitioner(s) qualified to practice under § 11.14 of this chapter to represent the owner for all existing applications or registrations that have the identical owner name.

* * * * *

5. Revise § 2.18 to read as follows:

§ 2.18 Correspondence, with whom held.

(a) *Establishing the correspondent.* The Office will send correspondence as follows:

(1) If the applicant, registrant, or party to a proceeding is not represented by an attorney qualified to practice before the Office under § 11.14(a) of this chapter, the Office will send correspondence to the applicant, registrant, or party to the proceeding.

(2) If an attorney is recognized as a representative pursuant to § 2.17(b)(1), the Office will correspond only with that attorney. A request to change the correspondence address does not revoke a power of attorney. Except for service of a cancellation petition, the Office will not correspond directly with the applicant, registrant, or a party to a proceeding, or with another attorney from a different firm, unless:

(i) The applicant or registrant 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);

(ii) The attorney has been suspended or excluded from practicing in trademark matters before the USPTO; or

(iii) Recognition of the attorney has ended pursuant to § 2.17(g).

(b) *Ex parte matters.* Only one correspondence address may be designated in an ex parte matter.

(c) *Maintaining and changing the correspondence addresses.* The applicant, registrant, or party to a proceeding must maintain current and accurate correspondence addresses, as required by § 2.23, for itself and its attorney, if one is designated. If any of these addresses change, a request to change the address, signed in accordance with § 2.193(e)(9), must be promptly filed.

(d) *Post registration filings under sections 7, 8, 9, 12(c), 15, and 71 of the Act.* 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 under section 8, 12(c), 15, or 71 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 new address is provided, in accordance with paragraph (a) of this section.

6. Revise § 2.21 to read as follows:

§ 2.21 Requirements for receiving a filing date.

(a) The Office will grant a filing date to an application under section 1 or section 44 of the Act that is filed through TEAS, is written in the English language, and contains all of the following:

(1) The name, domicile address, and email address of each applicant;

(2) If the applicant is represented by a practitioner qualified under § 11.14 of this chapter, the practitioner's name, postal address, and email address;

(3) A clear drawing of the mark;

(4) A listing of the goods or services; and

(5) The filing fee required under § 2.6 for at least one class of goods or services.

(b) If the applicant does not satisfy all the elements required in paragraph (a) of this section, the Office will deny a filing date to the application unless the applicant meets the requirements of paragraph (c) of this section.

(c) If the applicant is a national of a country that has acceded to the Trademark Law Treaty, but not to the Singapore Treaty on the Law of Trademarks, the requirements of paragraph (a) of this section to file through TEAS and provide an email address do not apply.

7. Revise § 2.22 to read as follows:

§ 2.22 Requirements for a TEAS Plus application.

(a) A trademark/service mark application for registration on the Principal Register under section 1 and/or section 44 of the Act that meets the requirements for a filing date under § 2.21 will be entitled to a reduced filing fee under § 2.6(a)(1)(iv) if it includes:

- (1) The applicant's legal entity;
- (2) The citizenship of each individual applicant, or the state or country of incorporation or organization of each juristic applicant;
- (3) If the applicant is a domestic partnership, the names and citizenship of the general partners, or if the applicant is a domestic joint venture, the names and citizenship of the active members of the joint venture;
- (4) If the applicant is a sole proprietorship, the state of organization of the sole proprietorship and the name and citizenship of the sole proprietor;
- (5) One or more bases for filing that satisfy all the requirements of § 2.34. If more than one basis is set forth, the applicant must comply with the requirements of § 2.34 for each asserted basis;
- (6) Correctly classified goods and/or services, with an identification of goods and/or services from the Office's Acceptable Identification of Goods and Services Manual, available through the TEAS Plus form. In an application based on section 44 of the Act, the scope of the goods and/or services covered by the section 44 basis may not exceed the scope of the goods and/or services in the foreign application or registration;
- (7) If the application contains goods and/or services in more than one class, compliance with § 2.86;

(8) A filing fee for each class of goods and/or services, as required by § 2.6(a)(1)(iv);

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

(10) If the applicant does not claim standard characters, the applicant must attach a digitized image of the mark. If the mark includes color, the drawing must show the mark in color;

(11) If the mark is in standard characters, a mark comprised only of characters in the Office's standard character set, typed in the appropriate field of the TEAS Plus form;

(12) If the mark includes color, a statement naming the color(s) and describing where the color(s) appears on the mark, and a claim that the color(s) is a feature of the mark;

(13) If the mark is not in standard characters, a description of the mark;

(14) If the mark includes non-English wording, an English translation of that wording;

(15) If the mark includes non-Latin characters, a transliteration of those characters;

(16) If the mark includes an individual's name or portrait, either (i) a statement that identifies the living individual whose name or likeness the mark comprises and written consent of the individual, or (ii) a statement that the name or portrait does not identify a living individual (*see* section 2(c) of the Act).

(17) If the applicant owns one or more registrations for the same mark, and the owner(s) last listed in Office records of the prior registration(s) for the same mark differs

from the owner(s) listed in the application, a claim of ownership of the registration(s) identified by the registration number(s), pursuant to § 2.36;

(18) If the application is a concurrent use application, compliance with § 2.42; and

(19) An applicant whose domicile is not located within the United States or its territories must designate an attorney as the applicant's representative, pursuant to § 2.11(a), and include the attorney's name, postal address, email address, and bar information.

(b) In addition to the filing requirements under paragraph (a) of this section, the applicant must comply with § 2.23(a) and (b).

(c) If an application does not fulfill the requirements of paragraph (a) of this section, the applicant must pay the processing fee required by § 2.6(a)(1)(v).

(d) The following types of applications cannot be filed as TEAS Plus applications:

(1) Applications for certification marks (*see* § 2.45);

(2) Applications for collective trademarks and service marks (*see* § 2.44);

(3) Applications for collective membership marks (*see* § 2.44); and

(4) Applications for registration on the Supplemental Register (*see* § 2.47).

8. Revise § 2.23 to read as follows:

§ 2.23 Requirement to correspond electronically with the Office and duty to monitor status.

(a) Unless stated otherwise in this chapter, all trademark correspondence must be submitted through TEAS.

(b) Applicants, registrants, and parties to a proceeding must provide and maintain a valid email address for correspondence.

(c) If the applicant or registrant is a national of a country that has acceded to the Trademark Law Treaty, but not to the Singapore Treaty on the Law of Trademarks, the requirements of paragraphs (a) and (b) of this section do not apply.

(d) Notices issued or actions taken by the USPTO are displayed in the USPTO's publicly available electronic systems. Applicants and registrants are responsible for monitoring the status of their applications and registrations in the USPTO's electronic systems during the following time periods:

(1) At least every six months between the filing date of the application and issuance of a registration; and

(2) After filing an affidavit of use or excusable nonuse under section 8 or section 71 of the Act, or a renewal application under section 9 of the Act, at least every six months until the registrant receives notice that the affidavit or renewal application has been accepted.

9. Revise § 2.24 to read as follows:

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

(a) An applicant or registrant that is not domiciled in the United States may designate a domestic representative (i.e., a person residing in the United States on whom notices or process in proceedings affecting the mark may be served).

(b) The designation, or a request to change or revoke a designation, must set forth the name, email address, and postal address of the domestic representative and be signed pursuant to § 2.193(e)(8).

(c) The mere designation of a domestic representative does not authorize the person designated to represent the applicant or registrant.

10. Amend § 2.32 by revising paragraphs (a)(2) and (3) and (d) to read as follows:

§ 2.32 Requirements for a complete trademark or service mark application.

(a) * * *

(2) The name, domicile address, and email address of each applicant. If the applicant is a national of a country that has acceded to the Trademark Law Treaty, but not to the Singapore Treaty on the Law of Trademarks, the requirement to provide an email address does not apply;

(3)(i) The legal entity type and citizenship of the applicant(s); and

(ii) If the applicant is a corporation, association, partnership or other juristic person, the jurisdiction (usually state or nation) under the laws of which the applicant is organized;

(iii) If the applicant is a domestic partnership, the names and citizenship of the general partners;

(iv) If the applicant is a domestic joint venture, the names and citizenship of the active members of the joint venture; or

(v) If the applicant is a sole proprietorship, the state of organization of the sole proprietorship and the name and citizenship of the sole proprietor.

* * * * *

(d) The application must include the fee required by § 2.6 for each class of goods or services.

* * * * *

11. Revise § 2.56 to read as follows:

2.56 Specimens.

(a) An application under section 1(a) of the Act, an amendment to allege use under § 2.76, a statement of use under § 2.88, an affidavit or declaration of continued use or excusable nonuse under § 2.160, or an affidavit or declaration of use or excusable nonuse under § 7.36 must include one specimen per class showing the mark as actually used in commerce on or in connection with the goods or services identified. When requested by the Office as reasonably necessary to proper examination, additional specimens must be provided.

(b)(1) A trademark specimen must show use of the mark on the goods, on containers or packaging for the goods, on labels or tags affixed to the goods, or on a display associated with the goods. To constitute a display associated with the goods, a specimen must show use of the mark directly associated with the goods and such use must be of a point-of-sale nature. The Office may accept another document related to the goods or the sale of the goods when it is impracticable to place the mark on the goods, packaging for the goods, or displays associated with the goods.

(2) A service mark specimen must show the mark as used in the sale of the services, including use in the performance or rendering of the services, or in the advertising of the services. The specimen must show a direct association between the mark and the services.

(3) A collective trademark or collective service mark specimen must show how a member uses the mark on the member's goods or in the sale of the services, including use in the performance or rendering of the services, or advertising of the member's services.

(4) A collective membership mark specimen must show use by members to indicate membership in the collective organization.

(5) A certification mark specimen must show how a person other than the owner uses the mark to reflect certification of regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of that person's goods or services; or that members of a union or other organization performed the work or labor on the goods or services.

(c) A clear and legible photocopy, photograph, webpage printout, or other similar type of reproduction of an actual specimen that meets the requirements of paragraphs (a) and (b) of this section is acceptable. The reproduction must show the entire specimen or enough of the specimen that the nature of the specimen, the mark, and the good or service with which the mark is used are identifiable. A webpage must include the URL and access or print date. An artist's rendering, a printer's proof, a computer illustration, digital image, or similar mockup of how the mark may be displayed, or a photocopy of the drawing required by § 2.51, are not proper specimens.

(d) The specimen must be submitted through TEAS in a file format designated as acceptable by the Office, unless:

(1) The mark consists of a scent, flavor, or similar non-traditional mark type, in which case the specimen may be mailed to the Office, pursuant to § 2.190(a), without resort to the procedures set forth in § 2.147; or

(2) Submission on paper is permitted under § 2.23(c) or is accepted on petition pursuant to § 2.147.

12. Revise § 2.62 to read as follows:

§ 2.62 Procedure for submitting response.

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

(b) *Signature.* The response 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 qualified to practice under § 11.14 of this chapter, in accordance with the requirements of § 2.193(e)(2).

(c) *Form.* Responses must be submitted through TEAS pursuant to § 2.23(a). Responses sent via email or facsimile will not be accorded a date of receipt.

13. Amend § 2.111 by revising paragraph (c)(2) to read as follows:

§ 2.111 Filing petition for cancellation.

* * * * *

(c) * * *

(2)(i) In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, a petition to cancel may be filed in paper form. A paper petition to cancel a registration must be accompanied by a Petition to the Director under § 2.146, with the fees therefor and the showing required under this paragraph (c). Timeliness of the paper submission, if relevant to a ground asserted in the petition to cancel, will be determined in accordance with §§ 2.195 through 2.198.

(ii) For a petition to cancel a registration on the fifth year anniversary of the date of registration of the mark, a petitioner for cancellation who meets the requirements of § 2.147(b) may submit a petition to the Director to accept a timely filed paper petition to cancel.

* * * * *

14. Amend § 2.146 by revising paragraph (a) to read as follows:

§ 2.146 Petitions to the Director.

(a) Petition may be taken to the Director in a trademark case:

(1) From any repeated or final formal requirement of the examiner in the ex parte prosecution of an application if permitted by § 2.63(a) and (b);

(2) In any case for which the Act of 1946, Title 35 of the United States Code, or parts 2, 3, 6, and 7 of Title 37 of the Code of Federal Regulations specifies that the matter is to be determined directly or reviewed by the Director;

(3) To invoke the supervisory authority of the Director in appropriate circumstances;

(4) In any case not specifically defined and provided for by parts 2, 3, 6, and 7 of Title 37 of the Code of Federal Regulations; or

(5) In an extraordinary situation, when justice requires and no other party is injured thereby, to request a suspension or waiver of any requirement of the rules not being a requirement of the Act of 1946.

* * * * *

15. Add § 2.147 to read as follows:

§ 2.147 Petition to the Director to accept a paper submission.

(a) *Paper submission when TEAS is unavailable on the date of a filing deadline.*

(1) An applicant or registrant may file a petition to the Director under this section requesting acceptance of a submission filed on paper if:

(i) TEAS is unavailable on the date of the deadline for the submission specified in a regulation in part 2 or 7 of this chapter or in a section of the Act; and

(ii) The petition is timely filed, pursuant to § 2.197 or § 2.198, on the date of the deadline.

(2) The petition must include:

(i) The paper submission;

(ii) Proof that TEAS was unavailable on the date of the deadline;

(iii) A statement of the facts relevant to the petition, supported by a declaration under § 2.20 or 28 U.S.C. 1746 that is signed by the petitioner, someone with legal authority to bind the petitioner (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter;

(iv) The fee for a petition filed on paper under § 2.6(a)(15)(i); and

(v) Any other required fee(s) under § 2.6 for the paper submission.

(b) *Certain paper submissions timely filed before the date of a filing deadline.* (1)

An applicant, registrant, or petitioner for cancellation may file a petition to the Director under this section, requesting acceptance of any of the following submissions that was timely submitted on paper and otherwise met the minimum filing requirements, but not processed or examined by the Office because it was not submitted electronically pursuant to § 2.21(a), § 2.23(a), or § 2.111(c)(1), and the applicant, registrant, or petitioner for cancellation is unable to timely resubmit the document electronically by the deadline:

(i) An application seeking a priority filing date with a deadline under section 44(d)(1) of the Act;

(ii) A statement of use filed within the last six months of the period specified in section 1(d)(2) of the Act;

(iii) An affidavit or declaration of continued use or excusable nonuse with a deadline under section 8(a)(3) or section 71(a)(3) of the Act;

(iv) A request for renewal of a registration with a deadline under section 9(a) of the Act;

(v) An application for transformation of an extension of protection into a United States application with a deadline under section 70(c) of the Act; or

(vi) A petition to cancel a registration under section 14 of the Act on the fifth year anniversary of the date of the registration of the mark.

(2) The petition must be filed by not later than two months after the issue date of the notice denying acceptance of the paper filing and must include:

(i) A statement of the facts relevant to the petition, supported by a declaration under § 2.20 or 28 U.S.C. 1746 that is signed by the petitioner, someone with legal authority to bind the petitioner (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter;

(ii) A copy of the relevant paper submission and proof that it was timely filed;

(iii) Proof that a sufficient fee accompanied the original paper submission;

(iv) The required fee(s) under § 2.6 for the paper submission; and

(v) The relevant petition fee under § 2.6(a)(15).

(c) *Petition under § 2.146.* If the applicant or registrant is unable to meet the requirements under paragraphs (a) or (b) of this section for filing the petition, the

applicant or registrant may submit a petition to the Director under § 2.146(a)(5) to request a waiver of § 2.21(a) or § 2.23(a).

(d) This section does not apply to requirements for paper submissions to the Trademark Trial and Appeal Board except as specified in paragraph (b)(vi).

16. Revise § 2.148 to read as follows:

§ 2.148 Director may suspend certain rules.

In an extraordinary situation, when justice requires and no other party is injured thereby, any requirement of the rules in parts 2, 3, 6, and 7 of this chapter that is not a requirement of the Act may be suspended or waived by the Director.

17. Revise § 2.151 to read as follows:

§2.151 Certificate.

When the Office determines that a mark is registrable, the Office will issue to the owner a certificate of registration on the Principal Register or the Supplemental Register. The certificate will state the application filing date, the act under which the mark is registered, the date of issue, and the number of the registration and will include a reproduction of the mark and pertinent data from the application. A notice of the requirements of sections 8 and 71 of the Act will issue with the certificate.

18. Revise § 2.162 to read as follows:

§2.162 Notice to registrant.

When a certificate of registration is originally issued, the Office issues with the certificate a notice of the requirement for filing the affidavit or declaration of use or excusable nonuse under section 8 or section 71 of the Act. However, the affidavit or

declaration must be filed within the time period required by section 8 or section 71 of the Act even if this notice is not received.

19. Revise § 2.190 to read as follows:

§ 2.190 Addresses for trademark correspondence with the United States Patent and Trademark Office.

(a) *Paper trademark documents.* In general, trademark documents to be delivered by the USPS must be addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451. Trademark-related documents to be delivered by hand, private courier, or other delivery service may be delivered during the hours the Office is open to receive correspondence to the Trademark Assistance Center, James Madison Building--East Wing, Concourse Level, 600 Dulany Street, Alexandria, Virginia 22314.

(b) *Electronic trademark documents.* Trademark documents filed electronically must be submitted through TEAS. Documents that relate to proceedings before the Trademark Trial and Appeal Board must be filed electronically with the Board through ESTTA.

(c) *Trademark assignment documents.* Requests to record documents in the Assignment Recordation Branch may be filed electronically through ETAS. Paper documents and cover sheets to be recorded in the Assignment Recordation Branch should be addressed as designated in § 3.27 of this chapter.

(d) *Requests for certified copies of trademark documents.* Paper requests for certified copies of trademark documents must be addressed to: Mail Stop Document Services, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450.

(e) *Certain documents relating to international applications and registrations.*

International applications under § 7.11, subsequent designations under § 7.21, responses to notices of irregularity under § 7.14, requests to record changes in the International Register under § 7.23 and § 7.24, requests to note replacements under § 7.28, requests for transformation under § 7.31 of this chapter, and petitions to the Director to review an action of the Office's Madrid Processing Unit must be addressed to: Madrid Processing Unit, 600 Dulany Street, Alexandria, VA 22314-5796.

20. Revise § 2.191 to read as follows:

§ 2.191 Action of the Office based on the written record.

All business with the Office must be transacted in writing. The action of the Office will be based exclusively on the written record. No consideration will be given to any alleged oral promise, stipulation, or understanding when there is disagreement or doubt.

21. Amend § 2.193 by:

- a. Revising paragraphs (a)(2), (b), (c)(1), (d), (e) introductory text, (e)(5) introductory text, and (e)(9);
- b. Removing paragraph (e)(10); and
- c. Revising paragraphs (f) and (g).

The revisions read as follows:

§ 2.193 Trademark correspondence and signature requirements.

(a) * * *

(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 or through TEAS or ESTTA.

(b) *Copy of original signature.* If a 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) * * *

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

* * * * *

(d) *Signatory must be identified.* The first and last name, and the title or position, of the person who signs a document in connection with a trademark application, registration, or proceeding before the Trademark Trial and Appeal Board must be set forth immediately below or adjacent to the signature.

(e) *Proper person to sign.* Documents filed in connection with a trademark application or registration must be signed as specified in paragraphs (e)(1) through (9) of this section:

* * * * *

(5) *Petitions to Director under § 2.146 or § 2.147.* A petition to the Director under § 2.146 or § 2.147 must be signed by the petitioner, someone with legal authority to bind the petitioner (*e.g.*, a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter, in accordance with the following guidelines:

* * * * *

(9) *Requests to change correspondence address in an application or registration.*

A notice of change of correspondence address in an application or registration 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 qualified to practice under § 11.14 of this chapter, in accordance with the following guidelines:

(i) If the applicant or registrant is represented by a practitioner qualified to practice before the Office under § 11.14 of this chapter, the practitioner must sign; or

(ii) If the applicant or registrant is not represented by a practitioner qualified to practice before the Office under § 11.14, 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, all must sign.

(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 § 11.18(b) of this chapter. Violations of § 11.18(b) of this chapter may jeopardize the validity of the application or registration, and may result in the imposition of sanctions under § 11.18(c) of this chapter. Any practitioner violating § 11.18(b) of this chapter may also be subject to disciplinary action. See § 11.18(d) and § 11.804 of this chapter.

(g) *Separate copies for separate files.* (1) Since each file must be complete in itself, a separate copy of every document 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 documents filed in multiple files may be identical.

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

* * * * *

22. Revise § 2.195 to read as follows:

§ 2.195 Filing date of trademark correspondence.

The filing date of trademark correspondence is determined as follows:

(a) *Electronic submissions.* The filing date of an electronic submission is the date the Office receives the submission, based on Eastern Time, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia.

(b) *Paper correspondence.* The filing date of a submission submitted on paper is the date the Office receives the submission, except as follows:

(1) *Priority Mail Express®.* The filing date of the submission is the date of deposit with the USPS, if filed pursuant to the requirements of § 2.198.

(2) *Certificate of mailing.* The filing date of the submission is the date of deposit with the USPS, if filed pursuant to the requirements of § 2.197.

(3) *Office closed.* The Office is not open to receive paper correspondence on any day that is a Saturday, Sunday, or Federal holiday within the District of Columbia.

(c) *Email and facsimile submissions.* Email and facsimile submissions are not permitted and, if submitted, will not be accorded a date of receipt.

(d) *Interruptions in USPS*. If the Director designates a postal service interruption or emergency within the meaning of 35 U.S.C. 21(a), any person attempting to file correspondence by Priority Mail Express® Post Office to Addressee service who was unable to deposit the correspondence with the USPS due to the interruption or emergency may petition the Director to consider such correspondence as filed on a particular date in the Office. The petition must:

(1) Be filed promptly after the ending of the designated interruption or emergency;

(2) Include the original correspondence or a copy of the original correspondence; and

(3) Include a statement that the correspondence would have been deposited with the USPS on the requested filing date but for the designated interruption or emergency in Priority Mail Express® service; and that the correspondence attached to the petition is the original correspondence or a true copy of the correspondence originally attempted to be deposited as Priority Mail Express® on the requested filing date.

23. Revise § 2.197 to read as follows:

§ 2.197 Certificate of mailing.

(a) The filing date of correspondence submitted under this section is the date of deposit with the USPS if the correspondence:

(1) Is addressed as set out in § 2.190 and deposited with the USPS with sufficient postage as first-class mail; and

(2) Includes a certificate of mailing for each piece of correspondence that:

(i) Attests to the mailing and the address used;

(ii) Includes the name of the document and the application serial number or USPTO reference number, if assigned, or registration number to which the document pertains;

(iii) Is signed separately from any signature for the correspondence by a person who has a reasonable basis to expect that the correspondence would be mailed on the date indicated; and

(iv) Sets forth the date of deposit with the USPS.

(b) If correspondence is mailed in accordance with paragraph (a) of this section, but not received by the Office, the party who mailed such correspondence may file a petition to the Director under § 2.146(a)(2) to consider such correspondence filed in the Office on the date of deposit with the USPS. The petition must:

(1) Be filed within two months after the date of mailing;

(2) Include a copy of the previously mailed correspondence and certificate; and

(3) Include a verified statement attesting to the facts of the original mailing.

(c) If the certificate of mailing does not meet the requirements of paragraph (a)(2) of this section, the filing date is the date the Office receives the submission.

24. Revise § 2.198 to read as follows:

§ 2.198 Filing of correspondence by Priority Mail Express®.

(a) The filing date of correspondence submitted under this section is the date of deposit with the USPS, as shown by the “date accepted” on the Priority Mail Express® label or other official USPS notation.

(b) If the USPS deposit date cannot be determined, the filing date is the date the Office receives the submission.

(c) If there is a discrepancy between the filing date accorded by the Office to the correspondence and the “date accepted,” the party who submitted the correspondence may file a petition to the Director under § 2.146(a)(2) to accord the correspondence a filing date as of the “date accepted.” The petition must:

(1) Be filed within two months after the date of deposit;

(2) Include a true copy of the Priority Mail Express® mailing label showing the “date accepted,” and any other official notation by the USPS relied upon to show the date of deposit; and

(3) Include a verified statement attesting to the facts of the original mailing.

(d) If the party who submitted the correspondence can show that the “date accepted” was incorrectly entered or omitted by the USPS, the party may file a petition to the Director under § 2.146(a)(2) to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS. The petition must:

(1) Be filed within two months after the date of deposit;

(2) Include proof that the correspondence was deposited in the Priority Mail Express® Post Office to Addressee service prior to the last scheduled pickup on the requested filing date. Such proof must be corroborated by evidence from the USPS or evidence that came into being within one business day after the date of deposit; and

(3) Include a verified statement attesting to the facts of the original mailing.

(e) If correspondence is properly addressed to the Office pursuant to § 2.190 and deposited with sufficient postage in the Priority Mail Express® Post Office to Addressee service of the USPS, but not received by the Office, the party who submitted the

correspondence may file a petition to the Director under § 2.146(a)(2) to consider such correspondence filed in the Office on the USPS deposit date. The petition must:

- (1) Be filed within two months after the date of deposit;
- (2) Include a copy of the previously mailed correspondence showing the number of the Priority Mail Express® mailing label thereon; and
- (3) Include a verified statement attesting to the facts of the original mailing.

**PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE
PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING
THE INTERNATIONAL REGISTRATION OF MARKS**

25. The authority citation for part 7 continues to read as follows:

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

26. Amend § 7.1 by revising paragraphs (c) and (d) to read as follows:

§ 7.1 Definitions of terms as used in this part.

* * * * *

(c) The acronym *TEAS* means the Trademark Electronic Application System, and, as used in this part, includes all related electronic systems required to complete an electronic submission through TEAS.

(d) The term *Office* or the abbreviation *USPTO* means the United States Patent and Trademark Office.

* * * * *

27. Revise § 7.4 to read as follows:

**§ 7.4 International applications and registrations originating from the USPTO –
Requirements to electronically file and communicate with the Office.**

(a) Unless stated otherwise in this chapter, all correspondence filed with the USPTO relating to international applications and registrations originating from the USPTO must be submitted through TEAS and include a valid email address for correspondence.

(b) Applicants and registrants under this section must provide and maintain a valid email address for correspondence with the Office.

(c) If an applicant or registrant under this section is a national of a country that has acceded to the Trademark Law Treaty, but not to the Singapore Treaty on the Law of Trademarks, the requirements of paragraphs (a) and (b) of this section do not apply.

(d) If TEAS is unavailable, or in an extraordinary situation, an applicant or registrant under this section who is required to file a submission through TEAS may submit a petition to the Director under § 2.146(a)(5) and (c) of this chapter to accept the submission filed on paper.

28. Amend § 7.11 by:

- a. Revising paragraphs (a) introductory text and (a)(10) and (11);
- b. Removing paragraph (a)(12); and
- c. Revising paragraph (b).

The revisions read as follows:

§ 7.11 Requirements for international application originating from the United States.

(a) The Office will grant a date of receipt to an international application that is filed through TEAS in accordance with § 7.4(a), or typed on the official paper form

issued by the International Bureau, if permitted under § 7.4(c) or accepted on petition pursuant to § 7.4(d). The international application must include all of the following:

* * * * *

(10) If the application is filed through TEAS, the international application fees for all classes, and the fees for all designated Contracting Parties identified in the international application (*see* § 7.7); and

(11) A statement that the applicant is entitled to file an international application in the Office, specifying that applicant: is a national of the United States; has a domicile in the United States; or has a real and effective industrial or commercial establishment in the United States. Where an applicant's address is not in the United States, the applicant must provide the address of its U.S. domicile or establishment.

(b) For requirements for certification, see § 7.13.

29. Amend § 7.21 by:

- a. Revising paragraphs (b) introductory text and (b)(7) and (8);
- b. Removing paragraph (b)(9); and
- c. Revising paragraph (c).

The revisions read as follows:

§ 7.21 Subsequent designation.

* * * * *

(b) The Office will grant a date of receipt to a subsequent designation that is filed through TEAS in accordance with § 7.4(a), or typed on the official paper form issued by the International Bureau, if permitted under § 7.4(c) or accepted on petition pursuant to § 7.4(d). The subsequent designation must contain all of the following:

* * * * *

(7) The U.S. transmittal fee required by § 7.6; and

(8) If the subsequent designation is filed through TEAS, the subsequent designation fees (*see* § 7.7).

(c) If the subsequent designation is accorded a date of receipt, the Office will then forward the subsequent designation to the International Bureau.

* * * * *

30. Amend § 7.25 by revising paragraph (a) to read as follows:

§ 7.25 Sections of part 2 applicable to extension of protection.

(a) Except for §§ 2.21, 2.22, 2.76, 2.88, 2.89, 2.130, 2.131, 2.160 through 2.166, 2.168, 2.173, 2.175, and 2.181 through 2.186, all sections in parts 2 and 11 of this chapter shall apply to an extension of protection of an international registration to the United States, including sections related to proceedings before the Trademark Trial and Appeal Board, unless otherwise stated.

* * * * *

Dated: July 25, 2019.

Andrei Iancu,

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

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