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DEPARTMENT OF COMMERCE

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, delay of effective date.

SUMMARY: On July 31, 2019, the United States Patent and Trademark Office published in the Federal Register a final rule amending 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. That final rule had an effective date of October 5, 2019. This action changes the effective date to December 21, 2019.

DATES: The effective date of the final rule published on July 31, 2019 (84 FR 37081) is delayed from October 5, 2019 to December 21, 2019.

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

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (USPTO) published in the Federal Register (84 FR 37081, July 31, 2019) a final rule amending

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.

The effective date of the rule is being delayed to allow the USPTO additional time to prepare internally for implementation of the requirements associated with the mandate that applicants and registrants electronically file their trademark applications and all submissions associated with trademark applications and registrations, and that they designate an email address for receiving USPTO correspondence. This final rule would also provide the public an opportunity to more fully comprehend the nature of, and prepare to comply with, the new requirements before they are effective.

Rulemaking Requirements

Administrative Procedure Act: This final rule revises the effective date of a final rule published on July 31, 2019 implementing procedures requiring the electronic filing of Trademark applications, and is a rule of agency practice and procedure, and/or interpretive rules pursuant to 5 U.S.C. 553(b)(A). *See JEM Broad. Co. v. F.C.C.*, 22 F.3d 32. (D.C. Cir. 1994) (“[T]he ‘critical feature’ of the procedural exception [in 5 U.S.C. 553(b)(A)] ‘is that it covers agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency.’” (quoting *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980))); *see also Bachow Commc’ns Inc. v. F.C.C.*, 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 are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). *See 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))).

Moreover, the Director of the USPTO, pursuant to authority at 5 U.S.C. 553(b)(B), finds good cause to adopt the change in this final rule without prior notice and an opportunity for public comment, as such procedures would be impracticable and contrary to the public interest.

Immediate implementation of the delay in effective date is in the public interest, because it would allow the USPTO additional time to prepare internally for implementation of the requirements associated with the July 31, 2019 final rule. This final rule would also provide the public an opportunity to more fully comprehend the nature of, and prepare to comply with, the new requirements before they are effective. Delay of this final rule to provide prior notice and comment procedures is impracticable, because it would allow the July 31, 2019 rule to go into effect before the agency is ready to implement the new requirements. Therefore, the Director finds there is good cause to waive notice and comment procedures for this rule.

Finally, the change in this final rule may be made immediately effective, because this is not a substantive rule under 35 U.S.C. 553(d). Moreover, pursuant to 5 U.S.C. 553(d)(1), the Director finds good cause to allow this final rule to be made immediately effective because it would allow

the USPTO additional time to prepare internally for implementation of the requirements associated with the July 31, 2019 final rule.

Dated: September 24, 2019.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and

Director of the United States Patent and Trademark Office

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