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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 regulations 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. That final rule had an effective date of October 5, 2019, which was subsequently delayed until December 21, 2019. A correction to the July 31, 2019 rule was published on December 13, 2019 and is also effective on December 21, 2019. This action further delays the effective date of the both the July 31, 2019 final rule, and the December 13, 2019 correction, until February 15, 2020.

DATES: The effective date of the final rule published on July 31, 2019 (84 FR 37081), delayed on October 2, 2019 (84 FR 52363), is further delayed from December 21, 2019 to February 15,

2020. The correction published on December 13, 2019 (84 FR 68045), is delayed from December 21, 2019 to February 15, 2020.

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

SUPPLEMENTARY INFORMATION: On July 31, 2019, the United States Patent and Trademark Office (USPTO) published in the Federal Register (84 FR 37081, July 31, 2019) a final rule amending the regulations 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 July 31, 2019 rule was delayed from October 5, 2019 until December 21, 2019 (84 FR 52363, October 2, 2019). A correction to the July 31, 2019 rule was published on December 13, 2019 (84 FR 68045) and is also effective on December 21, 2019.

In response to recent feedback received from external stakeholders regarding their need to more fully comprehend the nature of, and prepare to comply with, the new requirements before they become effective, the effective date of both the July 31, 2019 final rule and the December 13, 2019 correction is being delayed until February 15, 2020. This final rule will also allow the USPTO additional time to ensure that internal 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, is in place.

Rulemaking Requirements

Administrative Procedure Act: This final rule revises the effective date of the July 31, 2019 final rule implementing procedures requiring the electronic filing of trademark applications and all submissions associated with trademark applications and registrations, and the subsequent correction rule published on December 13, 2019, and it 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 is

responsive to recent feedback received from external stakeholders regarding their need to more fully comprehend the nature of, and prepare to comply with, the new requirements before they are effective. It will also allow the USPTO additional time to ensure that internal implementation of the requirements associated with the July 31, 2019 final rule and the December 13, 2019 correction is in place. Delay of the July 31, 2019 final rule and the December 13, 2019 correction to provide prior notice and comment procedures is impracticable, because it would allow the July 31, 2019 final rule and December 13, 2019 correction to go into effect before external stakeholders are ready to comply with, and 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 effective earlier than the required 30-day delay in effectiveness because this is not a substantive rule under 35 U.S.C. 553(d). Moreover, pursuant to 5 U.S.C. 553(d)(3), the Director finds good cause to waive the 30-day delay in effectiveness for this final rule because such a delay would allow the July 31, 2019 final rule and December 13, 2019 correction to go into effect before external stakeholders are ready to comply with, and the agency is ready to implement, the new requirements.

Dated: December 16, 2019.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and

Director of the United States Patent and Trademark Office.

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