



3510-16-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 11, 41, and 42

[Docket No. PTO-P-2018-0031]

RIN 0651-AD31

Setting and Adjusting Patent Fees During Fiscal Year 2020

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule; correction.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) makes corrections to a final rule that set or adjusted patent fees that was published on August 3, 2020. This rule fixes typographical errors and makes other nonsubstantive changes to improve clarity in the regulations.

DATES: This correction is effective October 2, 2020.

FOR FURTHER INFORMATION CONTACT: Brendan Hourigan, Director of the Office of Planning and Budget, by telephone at 571-272-8966; or Dianne Buie, Director, Forecasting and Analysis Division, by telephone at 571-272-6301.

SUPPLEMENTARY INFORMATION:

Rulemaking Considerations

A. Administrative Procedure Act: This rulemaking corrects typographical and format errors in a rulemaking setting and adjusting patent fees. 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), do 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))).

The 30-day delay in effectiveness is not applicable because this rule is not a substantive rule, as the changes in this rule have no impact on the standard for reviewing patent applications. As discussed above, the changes in this rulemaking involve correcting typographic errors in the final rule published on August 3, 2020. These changes are administrative in nature and will have no substantive impact on the evaluation of a patent application. The purpose of a delay in effectiveness is to allow affected parties time to modify their behaviors, businesses, or practices to come into compliance with new regulations. This rule imposes no additional requirements on

the affected entities. Therefore, the requirement for a 30-day delay in effectiveness is not applicable, and the rule is made effective on October 2, 2020.

B. Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a Regulatory Flexibility Act analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is required. *See* 5 U.S.C. 603.

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

Corrections:

In FR Doc. 2020-16559, appearing on page 46932 in the Federal Register of Monday, August 3, 2020, the following corrections are made:

1. On page 46975, in the first column, the first sentence under the heading “Section 1.21” is revised to read “Section 1.21 is amended by revising paragraphs (a)(1), (2), and (5), (a)(9)(ii), and (a)(10), (k), (n), (o), and (q) to set forth miscellaneous fees and charges as authorized under section 10 of the Act.”

2. On page 46979, in the first column, the text reading “[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE Federal Register]” is revised to read “October 2, 2020”.

§ 1.17 [Corrected]

3. In the amendment to § 1.17:

- a. On page 46987, in the first column, in paragraph (a)(2), in TABLE 2 TO PARAGRAPH (a)(2), the second entry in the second column, “320.0”, is corrected to read “320.00”.
- b. On page 46987, in the second column, paragraph (f) introductory text is corrected to read “(f) For filing a petition under one of the following sections that refers to this paragraph (f):”.
- c. On page 46987, in the second column, paragraph (f) is corrected by adding periods at the end of each item listed below TABLE 10 TO PARAGRAPH (f).
- d. On page 46987, in the second column and continuing into the third column, paragraph (g) is corrected by adding periods at the end of each item listed below TABLE 11 TO PARAGRAPH (g).
- e. On page 46987, in the third column, paragraph (i)(2) introductory text is corrected to read “(2) For taking action under one of the following sections that refers to this paragraph (i)(2):”.
- f. On page 46987, in the third column, paragraph (i)(2) is corrected by adding periods at the end of each item listed below TABLE 14 TO PARAGRAPH (i)(2).
- g. On page 46988, in the first column, paragraph (q) introductory text is corrected to read: “(q) Processing fee for taking action under one of the following sections that refers to this paragraph (q): \$50.00.”.
- h. On page 46988, in the first column, paragraph (q) is corrected by adding periods at the end of each item listed after the introductory text.

§ 1.18 [Corrected]

4. On page 46988, in the second column, in § 1.18, paragraphs (d)(3), (e), and (f) are corrected to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

* * * * *

(d) * * *

(3) Republication fee (§ 1.221(a)) \$320.00

(e) For filing an application for patent term adjustment under § 1.705 210.00

(f) For filing a request for reinstatement of all or part of the term reduced pursuant to § 1.704(b) in an application for a patent term adjustment under § 1.705 420.00

§ 1.20 [Corrected]

5. In the amendments to § 1.20:

a. On page 46988, in the third column, paragraphs (c)(1)(i)(A) through (D) and (c)(1)(ii)(A) are corrected by adding a semicolon at the end of each paragraph.

b. On page 46988, in the third column, paragraph (c)(1)(i)(E) is corrected to read “(E) Margins that conform to the requirements of § 1.52(a)(1)(ii); and”.

c. On page 46988, in the third column, paragraph (c)(1)(i)(F) is corrected by adding a period at the end of the paragraph.

d. On page 46988, in the third column, paragraph (c)(1)(ii)(B) is corrected to read “The copy of the entire patent for which reexamination is requested pursuant to § 1.510(b)(4); and”.

e. On page 46988, in the third column, paragraph (c)(1)(ii)(C) is corrected by adding a period at the end of the paragraph.

f. On page 46989, in the first column, in paragraph (c)(7), TABLE 6 TO PARAGRAPH (c)(7) is revised to read as follows:

TABLE 6 TO PARAGRAPH (c)(7)

| | |
|--|----------|
| By a micro entity (§ 1.29)..... | \$945.00 |
| By a small entity (§ 1.27(a))..... | 1,890.00 |
| By other than a small or micro entity..... | 3,780.00 |

6. On page 46989, in the third column, amendatory instruction 7 is corrected by removing instruction 7c and redesignating instructions 7d through f as instructions 7c through e.

7. On page 46991, in the first column, in § 1.445, paragraph (a)(6) is corrected to read:

§ 1.445 International application filing, processing and search fees.

(a) * * *

(6) Late payment fee pursuant to PCT Rule 16bis.2.

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Dated: September 14, 2020.

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