



DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. PTO-T-2019-0027]

RIN 0651-AD42

Trademark Fee Adjustment

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

ACTION: Final rule; delay of effective date.

SUMMARY: On November 17, 2020, the United States Patent and Trademark Office (USPTO) published in the Federal Register a final rule on setting and adjusting trademark fees that is scheduled to go into effect on January 2, 2021. This final rule changes the effective date of one fee paid by international applicants under the Madrid Protocol from January 2, 2021, to February 18, 2021.

DATES: The effective date of 37 CFR 2.6(a)(1)(ii), amended at 85 FR 73197, November 17, 2020, is delayed from January 2, 2021, to February 18, 2021.

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

SUPPLEMENTARY INFORMATION: The USPTO published a final rule (85 FR 73197, Nov. 17, 2020) that set or adjusted certain trademark fees, as authorized by the Leahy-Smith America Invents Act, as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018. Those fee changes allow the USPTO to continue to recover the prospective aggregate costs of strategic and operational trademark and Trademark Trial and Appeal Board goals (based on workload projections included in the USPTO fiscal year 2021 Congressional Justification), including associated administrative costs, and to further

USPTO strategic objectives by better aligning fees with costs, protecting the integrity of the trademark register, improving the efficiency of agency processes, and ensuring financial sustainability to facilitate effective trademark operations.

Among the changes in the November 17, 2020 final rule, the USPTO amended the fee at 37 CFR 2.6(a)(1)(ii) addressing applications under section 66(a) of the Trademark Act, 15 U.S.C. 1141f. This fee, paid by international applicants designating the United States under the World Intellectual Property Organization's (WIPO) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol), is set to increase from \$400 to \$500.

This final rule delays the effective date of the change to § 2.6(a)(1)(ii) because the treaty requires three months advance notice to WIPO, which then alerts international applicants, before an increase in the amount of the international application/subsequent designation fee can enter into force. On November 18, 2020, the USPTO provided WIPO with the required notice of the change to § 2.6(a)(1)(ii). Thus, the effective date of § 2.6(a)(1)(ii) is delayed from January 2, 2021, to February 18, 2021, three months following the notification.

Rulemaking Requirements

A. Administrative Procedure Act: This final rule revises the effective date of § 2.6(a)(1)(ii). This action relates to the setting or adjusting of trademark fees and is a rule of agency practice and procedure and/or an interpretive rule 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), 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)).

Moreover, the Director of the USPTO, pursuant to authority at 5 U.S.C. 553(b)(B) and (d)(1), finds good cause to adopt the change in this final rule without prior notice and an opportunity for public comment or a 30-day delay in effectiveness, as such procedures would be impracticable and contrary to the public interest. Immediate implementation of the change to the effective date of § 2.6(a)(1)(ii) is in the public interest because it will allow the USPTO to meet its obligation under the Madrid Protocol to provide three months advance notice to WIPO and to international applicants of any changes to international application/subsequent designation fees. A delay of this final rule to provide prior notice and comment procedures and a delay in effectiveness are impracticable because they would allow the change to § 2.6(a)(1)(ii) to go into effect before the agency has provided WIPO with the required three-month advance notice, thereby defeating the purpose of this rulemaking. Therefore, the Director finds there is good cause to waive notice and comment procedures and the 30-day delay in effectiveness for this rule.

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 and none have been prepared. *See* 5 U.S.C. 605(b).

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 under Executive Order 12866 (Jan. 30, 2017).

Andrei Iancu,

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

[FR Doc. 2020-27564 Filed: 12/14/2020 8:45 am; Publication Date: 12/15/2020]