



DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO-T-2022-0034]

RIN 0651-AD65

Setting and Adjusting Trademark Fees During Fiscal Year 2025

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

ACTION: Final rule; correction.

SUMMARY: The United States Patent and Trademark Office (USPTO) is correcting nonsubstantive errors in the preamble and regulatory text of a final rule that appeared in the **Federal Register** on November 18, 2024. That final rule set or adjusted trademark fees as authorized by the Leahy-Smith America Invents Act (AIA), as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act). This action is necessary to address potential confusion for impacted entities that could result if these errors are not corrected. These corrections do not result in any substantive changes to the final rule.

DATES: The final rule correction is effective January 18, 2025.

FOR FURTHER INFORMATION CONTACT: C. Brett Lockard, Director, Forecasting and Analysis Division, at 571-272-0928 or Christopher.Lockard@uspto.gov.

SUPPLEMENTARY INFORMATION: On November 18, 2024, the USPTO published a final rule setting or adjusting trademark fees as authorized by the AIA, as amended by the SUCCESS Act. See 89 FR 91062. Subsequent to the publication of that final rule, it was discovered that the rule inadvertently omitted applicable cross-references in 37 CFR 2.22(a)(6) and (9) and contained an incorrect cross-reference in § 2.22(a)(8), which

referenced a fee that did not apply. This correction amends these sections to provide the correct cross-references.

Section 2.22 applies to all applications under section 1 and/or 44 of the Trademark Act, which includes not only trademark and service mark applications, but also applications for collective, collective membership, and certification marks. However, the cross-references in § 2.22(a)(6) and (9) referred only to §§ 2.34 and 2.33, respectively, which set out the requirements for trademark and service mark applications. Sections 2.22(a)(6) and (9) each should have included cross-references to §§ 2.44 and 2.45, which set forth the corresponding applicable requirements for collective, collective membership, and certification marks. This omission was unintentional and adding the applicable cross-references is not a substantive change to the final rule.

As noted in the preamble of the final rule, the USPTO is implementing a single electronic filing option for all section 1 and/or 44 applications, which includes collective and certification marks. Applicants choosing to comply with the base application requirements set forth in § 2.22 will pay the lowest fees under the final fee schedule. Applicants were always subject to the requirements for collective, collective membership, and certification marks at §§ 2.44 and 2.45, as applicable. The addition of these sections in § 2.22(a)(6) and (9) do not impose any new limitations but provide clarity to applicants that the requirements for collective, collective membership, and certification marks apply. This correction amends the preamble and § 2.22(a)(6) and (9) to add the inadvertently omitted cross-references.

In addition, § 2.22(a)(8) contained an incorrect cross-reference to § 2.6(a)(1)(ii), which is the fee for filing an application under section 66(a) of the Trademark Act and therefore does not apply to applications filed under section 1 and/or 44. This section should have cross-referenced only § 2.6(a)(1)(iii), which provides for the applicable fee.

This correction amends the preamble and § 2.22(a)(9) to remove the cross-reference to § 2.6(a)(1)(ii).

Rulemaking Considerations

Administrative Procedure Act

This final rule corrects inadvertent errors in a rulemaking setting and adjusting trademark fees. The changes in this final rule involve rules of agency practice and procedure and/or interpretive rules and do not require notice-and-comment rulemaking. See *Perez v. Mortg. Bankers Ass'n*, 135 S.Ct. 1199, 1204 (2015) (explaining that interpretive rules “advise the public of the agency’s construction of the statutes and rules which it administers” and do not require notice-and-comment rulemaking when issued or amended); *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”); and *JEM Broadcasting Co. v. F.C.C.*, 22 F.3d 320, 328 (D.C. Cir. 1994) (explaining that rules are not legislative because they do not “foreclose effective opportunity to make one’s case on the merits”).

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 changes 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 unnecessary, impracticable, and contrary to the public interest. As discussed above, the changes in this rulemaking involve corrections of errors in the final rule published on November 18, 2024, (which itself underwent notice and comment rulemaking and a 30-day delay in effective date) that provide clarity and without imposing any new requirements. The corrections will provide clarity and address potential confusion that could result if these errors are not corrected prior to the effective date of the November 18, 2024, final rule. Therefore, good cause exists to dispense with

the requirement for prior notice and an opportunity for public comment and a 30-day delay in effectiveness.

Correction

In FR Doc. 2024-26644 appearing on page 91062 in the **Federal Register** of Monday, November 18, 2024, at 89 FR 91062, the following corrections are made:

1. On page 91069, in the second column, the 6th, 8th, and 9th bullets are corrected to read as follows:

- One or more bases for filing that satisfy all the requirements of §§ 2.34, 2.44, or 2.45, as applicable. If more than one basis is set forth, the applicant must comply with the requirements of §§ 2.34, 2.44, or 2.45 for each asserted basis, as applicable;

* * * * *

- A filing fee for each class of goods and/or services, as required by § 2.6(a)(1)(iii);
- A verified statement that meets the requirements of §§ 2.33, 2.44, or 2.45, as applicable, dated and signed by a person properly authorized to sign on behalf of the owner pursuant to § 2.193(e)(1);

2. On page 91090, in the third column, in amendatory instruction 3, in § 2.22, paragraphs (a)(6), (8), and (9) are corrected to read as follows:

§ 2.22 [Corrected]

(a) * * *

(6) One or more bases for filing that satisfy all the requirements of §§ 2.34, 2.44, or 2.45, as applicable. If more than one basis is set forth, the applicant must comply with the requirements of §§ 2.34, 2.44, or 2.45 for each asserted basis, as applicable;

* * * * *

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

(9) A verified statement that meets the requirements of § 2.33, § 2.44, or § 2.45,
as applicable, dated and signed by a person properly authorized to sign on behalf of the
owner pursuant to § 2.193(e)(1);

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Derrick L. Brent,

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

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