DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO-P-2025-0004]

RIN 0651-AD83

Eliminating Expedited Examination of Design Applications

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

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO) previously suspended expedited examination of design applications effective April 17, 2025. Further to the suspension, the USPTO hereby amends the Rules of Practice in Patent Cases by removing the provisions in the Code of Federal Regulations that provide for expedited examination of design applications. The removal of those regulations supports the USPTO's efforts to reduce the pendency of unexamined design applications, which will benefit all design patent applicants. The removal also facilitates the USPTO's efforts to address the problem of erroneous micro entity certifications, as well as the USPTO's broader efforts to mitigate and protect against threats to the intellectual property system.

DATES: This rule is effective [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Erin Harriman, Senior Legal Advisor, Office of Patent Legal Administration, at 571-272-7747.

SUPPLEMENTARY INFORMATION:

I. Background

The USPTO previously suspended the expedited examination of design applications under 37 CFR 1.155 effective April 17, 2025. See Suspension of Expedited Examination of

Design Patent Applications, 1533 Off. Gaz. Pat. Office 212 (April 29, 2025) (Suspension Notice). As detailed in the Suspension Notice, the USPTO suspended the expedited examination of design applications because an extraordinary situation existed, and justice required the suspension. Specifically, there had been a significant increase in the number of requests for expedited examination of design applications, which negatively impacted the pendency of all design applications. The Suspension Notice also noted a significant increase in the number of erroneous micro entity certifications from applicants who do not qualify for micro entity status, coupled with heavy use of the expedited examination procedure by these applicants. The combination led to longer wait times for all applicants seeking design patents, including legitimate micro entity applicants, and revenue loss for the USPTO. The USPTO therefore suspended the expedited examination procedure for design applications to support its efforts to reduce the pendency of unexamined design applications and facilitate its efforts to address the problem of erroneous micro entity certifications, as well as its broader efforts to mitigate and protect against threats to the intellectual property system.

As a result of the suspension, the USPTO will not grant any request for expedited examination of a design application filed on or after April 17, 2025. The phrase "any request" encompasses initial and renewed requests. Accordingly, the USPTO will not grant a renewed request filed on or after April 17, 2025, irrespective of the filing date and time of the initial request, and whether the USPTO's dismissal of the initial request afforded the applicant an opportunity to submit a renewed request to rectify the deficiency. Additionally, 37 CFR 1.155 requires a complete request to include the fee under 37 CFR 1.17(k). The USPTO will *sua sponte* refund the fee under 37 CFR 1.17(k) associated with any request filed on or after April 17, 2025. The USPTO also removed form PTO/SB/27, titled "REQUEST FOR EXPEDITED EXAMINATION OF A DESIGN APPLICATION (37 CFR 1.155)," from the USPTO's website, and decommissioned the corresponding document code—ROCKET—in Patent Center.

Further to the suspension, the USPTO hereby amends the Rules of Practice in Patent

Cases by removing and reserving 37 CFR 1.17(k) and 1.155.

Although the expedited examination of design applications under 37 CFR 1.155 is eliminated, design patent applicants still have the ability to advance the examination of a design application in certain limited circumstances. Specifically, the Accelerated Examination program remains in effect for design applications where an applicant files a petition to make special with the appropriate showing and fee. See section 708.02(a) of the Manual of Patent Examining Procedure (MPEP) (9th Edition, Rev. 01.2024, November 2024) and *Discontinuation of the Accelerated Examination Program for Utility Applications*, 90 FR 24324 (June 10, 2025). In addition, under 37 CFR 1.102(c)(l), a petition to make an application special may be filed without a fee where the basis of the petition is the applicant's age or health. See section 708.02, subsections I and II, of the MPEP.

II. Regulations Being Removed

This rulemaking removes the regulations concerning the expedited examination of design applications in 37 CFR Part 1.

In particular, this rulemaking removes § 1.17(k). Section 1.17(k) sets forth the fee for filing a request for expedited examination under § 1.155(a).

This rulemaking additionally removes § 1.155. Section 1.155 established an expedited procedure for design applications for the fee set forth in § 1.17(k), whereby such applications are examined with priority and undergo expedited processing through the entire course of prosecution in the USPTO.

III. Discussion of Rule Changes

Part 1

Section 1.17: Section 1.17(k) is removed and reserved.

Section 1.155: Section 1.155 is removed and reserved.

IV. Rulemaking Considerations

A. Administrative Procedure Act: This final rule eliminates the provisions and fee for the

expedited examination of design applications. It does not change the substantive criteria of patentability for design applications. The changes are procedural in nature and do not impose any additional requirements on applicants. Therefore, the changes in this rulemaking involve rules of agency practice and procedure and/or interpretive rules and do not require notice-and-comment rulemaking, pursuant to 5 U.S.C. 553(b)(A). See *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 97, 101 (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 when issued or amended); *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336-37 (Fed. Cir. 2008) (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"); *In re Chestek PLLC*, 92 F.4th 1105, 1110 (Fed. Cir. 2024) (noting that rule changes that "do[] not alter the substantive standards by which the USPTO evaluates trademark applications" are procedural in nature and thus "exempted from notice-and-comment rulemaking."); and *JEM Broadcasting Co. v. F.C.C.*, 22 F.3d 320, 328 (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))). Accordingly, the USPTO implements this final rule without prior notice and opportunity for comment.

Also, the 30-day delay in effectiveness set forth in 5 U.S.C. 553(d) is specific to substantive rules. Because the changes in this rulemaking involve rules of agency practice and procedure and/or interpretive rules, rather than substantive provisions, the 30-day delay is not required.

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 (September 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (January 18, 2011). Specifically, and as discussed above, the USPTO has, to the extent feasible and applicable: (1) reasonably determined that the benefits of the rule justify its costs; (2) tailored the rule to impose the least burden on society consistent with obtaining the agency's regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens while maintaining flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 14192 (Deregulation): This regulation is not an Executive Order 14192 regulatory action because it has been determined to be not significant under Executive Order 12866.

F. Executive Order 13132 (Federalism): This rulemaking pertains strictly to federal agency procedures and does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

G. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on

Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (November 6, 2000).

H. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

I. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (February 5, 1996).

J. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (April 21, 1997).

K. Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (March 15, 1988).

L. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a "major rule" as defined in 5 U.S.C. 804(2).

M. Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not

involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq*.

N. National Environmental Policy Act of 1969: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq*.

O. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

P. Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. The collection of information involved in this final rule has been reviewed and previously approved by OMB under control number 0651-0031. In view of this final rule, the USPTO will submit an update to the 0651-0031 information collection in the form of a nonsubstantive change request.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Q. E-Government Act Compliance: The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to

provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, the USPTO amends 37 CFR part 1 as follows:

PART 1 – RULES OF PRACTICE IN PATENT CASES

1. The authority citation for part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

§ 1.17 [Amended]

2. Section 1.17 is amended by removing and reserving paragraph (k).

§ 1.155 [Removed and Reserved]

3. Remove and reserve § 1.155.

Coke Morgan Stewart,
Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.
[FR Doc. 2025-15497 Filed: 8/13/2025 8:45 am; Publication Date: 8/14/2025]