

person may enter or remain in the safety zone created in paragraph (a) of this section or bring, cause to be brought, or allow to remain in the safety zone created in paragraph (a) of this section any vehicle, vessel or object unless authorized by the Captain of the Port or his designated representative.

(c) *Enforcement.* The safety zone will be enforced daily June 15, 2010 through September 31, 2010 between the hours of 5:30 a.m. and 7:30 p.m.

(1) The Captain of the Port, Sector Portland, will notify the public of the enforcement and suspension of enforcement of the safety zone established by this section via any means that will provide as much notice as possible to the public. These means might include some or all of those listed in 33 CFR 165.7(a). The primary method of notification, however, will be through Broadcast Notice to Mariners and local Notice to Mariners.

(d) *Effective Period.* The safety zone created in paragraph (a) of this section will be in effect from 12:01 a.m. June 15, 2010 until 11:59 p.m. September 30, 2010 while work is being conducted on the jetty.

Dated: June 11, 2010.

F.G. Myer,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 2010-15273 Filed 6-23-10; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO-T-2010-0014]

RIN 0651-AC39

Trademark Technical and Conforming Amendments

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: The United States Patent and Trademark Office (“USPTO”) is amending the Rules of Practice in Trademark Cases to implement the Trademark Technical and Conforming Amendment Act of 2010. The rule changes harmonize the framework for submitting trademark registration maintenance filings to the USPTO by permitting holders of international registrations with an extension of protection to the United States under the Madrid Protocol (“Madrid Protocol

registrants”) to file Affidavits or Declarations of Use or Excusable Nonuse at intervals identical to those for nationally issued registrations. The changes additionally allow all trademark owners to cure deficiencies in their maintenance filings, including when the affidavit or declaration is not filed in the name of the owner of the registration.

DATES: This rule is effective on June 24, 2010. Comments must be received by August 23, 2010 to ensure consideration.

ADDRESSES: The Office prefers that comments be submitted via electronic mail message to TMFRNotices@uspto.gov. Written comments may also be submitted by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, attention Cynthia Lynch; by hand-delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia, attention Cynthia Lynch; or by electronic mail message via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (<http://www.regulations.gov>) for additional instructions on providing comments via the Federal eRulemaking Portal. The comments will be available for public inspection on the Office's Web site at <http://www.uspto.gov>, and will also be available at the Trademark Legal Policy Office, Madison East, Fourth Floor, 600 Dulany Street, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, by telephone at (571) 272-8742.

SUPPLEMENTARY INFORMATION:

Statutory Background

The Trademark Technical and Conforming Amendment Act of 2010 became effective on March 17, 2010. Public Law 111-146, 124 Stat. 66 (2010). In addition to making small technical and conforming corrections in Sections 7, 15, and 21 of the Lanham Act, 15 U.S.C. 1057, 1065, and 1071, the legislation makes other more noteworthy changes to Sections 8 and 71, 15 U.S.C. 1058 and 1141k, regarding filing Affidavits or Declarations of Use or Excusable Nonuse to maintain a registration.

Specifically, the legislation gives Madrid Protocol registrants the benefit of six-month grace periods immediately following the statutory time periods for filing their trademark registration maintenance documents under Section 71, 15 U.S.C. 1141k. Previously, no

grace period existed at the end of the six-year period following the date of registration in the U.S., and only a three-month grace period existed following the expiration of each successive 10-year period following registration. The new grace periods match those already provided to all other trademark owners for submitting maintenance filings to the USPTO.

In addition, the legislation allows all trademark owners to cure deficiencies in their post-registration maintenance filings outside of the statutory filing period upon payment of a deficiency surcharge, specifically including when affidavits or declarations are not filed in the name of the owner of the registration. Previously, the statute did not provide Madrid Protocol registrants with the opportunity to correct deficiencies in their maintenance filings and allowed all other trademark owners to correct deficiencies outside of the statutory filing period upon payment of the surcharge, except when an affidavit or declaration was not filed in the name of the owner.

The interim final rule revises 37 CFR parts 2 and 7 to implement the Trademark Technical and Conforming Amendment Act of 2010, as referenced above. It applies to all maintenance filings pending with the USPTO as of March 17, 2010, the effective date of the legislation.

References to “the Act,” “the Lanham Act,” “the Trademark Act,” or “the statute” refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, as amended.

Rule Making Considerations

The changes made in this interim final rule constitute interpretative rules or rules of agency practice and procedure and are not subject to the requirement for the publication of prior notice of proposed rule making. *See* The Administrative Procedure Act (“APA”), 5 U.S.C. 553(b)(3)(A). The rule changes relate solely to the procedures for maintaining a Federal trademark registration, and merely implement the Trademark Technical and Conforming Amendment Act of 2010, so that the Rules of Practice in Trademark Cases are consistent with the statutory revisions. Thus, they qualify as interpretative rules or rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). *See Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336-37, 87 U.S.P.Q.2d 1705, 1710 (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 rule making for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.” (quoting 5 U.S.C. 553(b)(A)), *Bachow Communications Inc. v. FCC*, 237 F.3d 683, 690 (DC Cir. 2001) (rules governing an application process are “rules of agency organization, procedure, or practice” and are exempt from the APA’s notice and comment requirement); see also *Merck & Co., Inc. v. Kessler*, 80 F.3d 1543, 1549–50, 38 USPQ2d 1347, 1351 (Fed. Cir. 1996) (the rules of practice promulgated under the authority of former 35 U.S.C. 6(a) (now in 35 U.S.C. 2(b)(2)) are not substantive rules (to which the notice and comment requirements of the APA apply)), and *Fressola v. Manbeck*, 36 USPQ2d 1211, 1215 (D.D.C. 1995) (“[i]t is extremely doubtful whether any of the rules formulated to govern patent or trademark practice are other than ‘interpretive rules, general statements of policy, * * * procedure, or practice.’”) (quoting C.W. Ooms, The United States Patent Office and the Administrative Procedure Act, 38 Trademark Rep. 149, 153 (1948)). Accordingly, prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553(b)(A) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law).

The establishment of a statutory deficiency surcharge in the amount of \$100 for Madrid Protocol registrants, who under the new legislation are now afforded the opportunity to correct a deficiency outside the statutory time period, comes in the context of making the treatment of Madrid Protocol registrants’ maintenance filing deficiencies consistent with those of non-Madrid Protocol registrants. The legislative history reflects that, with full awareness of the maintenance filing framework, including the \$100 deficiency surcharge already in existence for non-Madrid Protocol registrants, Congress sought to establish that same framework for Madrid Protocol registrants. See, e.g., 156 Cong. Rec. H1080 (daily ed. Mar. 3, 2010) (statement of Rep. Johnson) (“However, due to a technical mistake in the Lanham Act, our trademark laws unintentionally prevent trademark owners who file these affidavits for registering extensions under the Madrid Protocol from having the same rights as other U.S. trademark owners. Compliance with regulations should not reduce the rights of trademark owners. Today, we will harmonize our laws with the Madrid Protocol so that this

particular injustice no longer occurs.”) and 156 Cong. Rec. H1081 (daily ed. Mar. 3, 2010) (statement of Rep. Coble) (“The main purpose of the bill is to bring provisions for maintaining extensions of protection under Madrid in conformity with provisions for maintaining registrations.”). Thus, even the establishment of the \$100 deficiency surcharge for Madrid Protocol registrants constitutes an interpretative rule.

In the alternative, in the event these rule changes were deemed to require notice and comment, the USPTO has concluded that it has good cause, under 5 U.S.C. 553(b)(B), to adopt the changes made in this interim final rule without prior notice and opportunity for public comment, as such prior notice and comment procedures would be impracticable, unnecessary, and contrary to the public interest. The amendments made to the Trademark Act by the Trademark Technical and Conforming Amendment Act of 2010 became effective on March 17, 2010, and thus apply to maintenance filings for registrations currently pending before the USPTO. The Rules of Practice in Trademark Cases, however, are currently inconsistent with, and do not reflect the benefits provided by, the new legislation. To delay the conforming rule changes for prior notice and comment, and leave the inconsistency in place, is impracticable. In order to rectify the inconsistency as quickly and efficiently as possible, an interim final rule is issued to eliminate the inconsistency between the statute and the rules, while still affording the public the opportunity to comment on the rule changes.

In addition, delaying the rule changes for prior notice and comment is unnecessary because of the nature of the rule changes. As described above, the rule changes merely track the statutory changes, negating the need to consider public input on the substance of the rule changes prior to a final agency determination.

Finally, delaying the rule changes for prior notice and comment would be contrary to the public interest, as it could delay the implementation of the benefits established by the legislation or lead to public confusion caused by the inconsistency between the statute and the rules. This interim final rule, making conforming rule changes and establishing the amount of the statutory deficiency surcharge for Madrid Protocol registrants who wish to correct a deficiency after the statutory deadline, serves the public interest by quickly and efficiently implementing the new legislation, while still affording the

public the opportunity to comment on the rule changes.

The USPTO is interested in the public’s input and requests public comments regarding these amendments. Therefore, although the interim final rule is effective upon publication, the USPTO will publish in the **Federal Register** a response to any significant adverse comments received along with modifications to the rule, if any.

Discussion of Specific Rules

The following amendments bring the Rules of Practice in Trademark Cases into conformity with the Trademark Act, as amended by the Trademark Technical and Conforming Amendment Act of 2010.

The Office is amending 37 CFR 2.160(a)(3), 2.161(d)(2), and 2.163(c) to replace the references to “section 8(c)(1) of the Act” with “section 8(a)(3) of the Act.”

In addition, the Office is amending 37 CFR 2.160(a)(3) to add the wording “per class” to be consistent with the requirements stated in 37 CFR 2.161(d)(2). Similarly, the Office is amending 37 CFR 2.161(d)(2) to replace “late fee” with “grace period surcharge” to be consistent with the language used in 37 CFR 2.160(a)(3) and 37 CFR 7.37(d)(2).

The Office is amending 37 CFR 2.163(a) to replace “[i]f the owner of the registration filed the affidavit or declaration” with “[i]f the affidavit or declaration is filed.” Similarly, the Office is amending 37 CFR 2.164(a) to replace “[i]f the owner of the registration files the affidavit or declaration” with “[i]f the affidavit or declaration is filed.” These revisions reflect the amendment to the Act providing that when an affidavit or declaration is not filed in the name of the owner of the registration, it is a correctable deficiency.

The Office is amending 37 CFR 2.163(b) to replace the reference to “section 8(a) or section 8(b) of the Act” with “section 8(a) of the Act.”

The Office is amending 37 CFR 2.164(a)(1) to replace the reference to “sections 8(a) and 8(b) of the Act” with “sections 8(a)(1) and 8(a)(2) of the Act,” replace the reference to “section 8(a) or section 8(b) of the Act” with “section 8(a)(1) or section 8(a)(2) of the Act,” and replace the reference to “the deficiency surcharge required by section 8(c)(2) of the Act” with “the deficiency surcharge required by section 8(c) of the Act.”

In addition, the Office is amending 37 CFR 2.164(a)(1) to replace “[i]f the owner timely files the affidavit or declaration” with “[i]f the affidavit or declaration is timely filed.” This revision reflects the amendment to the

Act providing that when an affidavit or declaration is not filed in the name of the owner of the registration, it is a correctable deficiency.

The Office is amending 37 CFR 2.164(a)(2) to replace the reference to “grace period provided by section 8(c)(1) of the Act” with “grace period provided by section 8(a)(3) of the Act” and replace the reference to “deficiency surcharge required by section 8(c)(2) of the Act” with “deficiency surcharge required by section 8(c) of the Act.”

The Office is amending 37 CFR 2.164(b) to remove “or if it is filed within that period by someone other than the owner,” and “These deficiencies cannot be cured.” The deletions reflect the amendment to the Act providing that when an affidavit or declaration is not filed in the name of the owner of the registration, it is a correctable deficiency.

The Office is amending the heading for 37 CFR 2.168 to account for the rule’s applicability to affidavits or declarations under section 71 of the Act.

The Office is amending 37 CFR 2.168(a) to add “[t]he affidavit or declaration filed under section 15 of the Act may also be used as the affidavit or declaration required by section 71, if the affidavit or declaration meets the requirements of both sections 71 and 15.” By allowing Madrid Protocol registrants to combine their filings, the Office is providing them with the same filing options available to all other trademark owners.

The Office is adding 37 CFR 7.6(a)(8) to provide for the deficiency surcharge for Madrid Protocol registrants now provided by the Act. Previously, the Act did not confer authority on the USPTO to allow Madrid Protocol registrants to correct deficiencies in their maintenance filings, but did confer such authority with respect to the maintenance filings of other trademark owners. The amendment of the Act eliminated this disparity, and permits the USPTO to allow the correction of deficiencies in Madrid Protocol registrants’ maintenance filings after the statutory period with payment of the deficiency surcharge. This surcharge is provided in order to give Madrid Protocol registrants the same benefit available to all other trademark owners, and the amount is the same as the deficiency surcharge applicable to other trademark owners, provided in 37 CFR 2.6(a)(20).

The Office is amending 37 CFR 7.25(a) to remove the reference to § 2.168 since § 2.168 now applies to registered extensions of protection.

The Office is amending 37 CFR 7.36(b)(2) to account for the new time

periods provided by the Act for filing the affidavits or declarations due each successive ten-year period following registration. Previously, Madrid Protocol registrants had a six-month window in which to make such filings. They now have the benefit of a full year to make such filings, not including the grace period. The new time periods match those given to other trademark owners.

The Office is adding 37 CFR 7.36(b)(3) to account for the new grace periods provided by the Act. Previously, for Madrid Protocol registrants, no grace period existed at the end of the six-year period following the date of registration and only a three-month grace period existed following the expiration of each successive ten-year period following registration. Now, Madrid Protocol registrants have the benefit of six-month grace periods immediately following the statutory time periods. The newly enacted grace periods match those given to other trademark owners.

The Office is adding 37 CFR 7.36(c) to be analogous to 37 CFR 2.160(b).

The Office is amending 37 CFR 7.37(d)(2) to replace the reference to “section 71(a)(2)(B) of the Act” with “section 71(a)(3) of the Act.”

The Office is amending the heading for 37 CFR 7.39 to account for the ability of Madrid Protocol registrants to correct deficiencies in their maintenance filings as provided by the Act.

The Office is adding introductory text to 37 CFR 7.39 that is analogous to the introductory text for 37 CFR 2.163 and includes text previously in 37 CFR 7.39(a).

The Office is amending 37 CFR 7.39(a) to include text previously in 37 CFR 7.39(b) and to state who must sign an Office action response. This is analogous to 37 CFR 2.163(b) and is consistent with the requirements of 37 CFR 2.193(e)(2).

The Office is amending 37 CFR 7.39(b) to account for the grace period provided by the Act and a Madrid Protocol registrant’s option of filing a new affidavit or declaration if time remains in the grace period. This is analogous to 37 CFR 2.163(c) as applied to all other trademark owners.

The Office is adding 37 CFR 7.39(c), (c)(1), and (c)(2) to account for the ability of Madrid Protocol registrants to correct deficiencies in their maintenance filings as provided by the Act. This is analogous to 37 CFR 2.164 as applied to all other trademark owners.

The Office is adding § 7.39(d) to be analogous to § 2.164(b).

Rule Making Requirements

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

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 analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required for this interim final rule. See 5 U.S.C. 603. Nevertheless, the Deputy General Counsel for General Law of the United States Patent and Trademark Office certifies to the Chief Counsel for Advocacy of the Small Business Administration that this interim final rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

The principal impact of this rule making is to ensure that holders of international registrations are provided with greater flexibility to maintain their marks. Furthermore, this increased flexibility harmonizes the requirements between international registrations and nationally issued registrations. The only fee (\$100.00) associated with this rule making is to enable international registrants to receive the benefit of correcting a deficiency in their maintenance filings outside the statutory time period. Of the approximately 126,000 affidavits filed under the national registration process, less than 800 (or less than two-thirds of one percent) paid the \$100.00 deficiency surcharge. In 2010, the Office estimates approximately 2,700 affidavits will be filed under the international registration process. Assuming that a similar percentage of international registrants would pay the deficiency surcharge, the Office estimates only a small number of registrants would be subject to the fee. For these reasons, the Office has concluded that this interim final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act: This proposed rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this

proposed rule has been reviewed and previously approved by OMB under control number 0651–0051. The United States Patent and Trademark Office is not resubmitting an information collection request to OMB for its review and approval because the changes in this proposed rule would not affect the information collection requirements associated with the information collection under OMB control number 0651–0051.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reduction of this burden, to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office; and (2) Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451 (Attn: Cynthia Lynch).

Notwithstanding any other provision of law, no person is required to respond to nor shall a 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.

Unfunded Mandates: The Unfunded Mandates Reform Act, at 2 U.S.C. 1532, requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, and Tribal governments or the private sector.

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.*), prior to issuing any final rule, 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. However, this

action is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Trademarks.

37 CFR Part 7

Administrative practice and procedure, Trademarks, International registration.

■ For the reasons stated in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the Office is amending parts 2 and 7 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 2. Revise § 2.160(a)(3) to read as follows:

§ 2.160 Affidavit or declaration of continued use or excusable nonuse required to avoid cancellation of registration.

(a) * * *

(3) The affidavit or declaration may be filed within a grace period of six months after the end of the deadline set forth in paragraphs (a)(1) and (a)(2) of this section, with payment of the grace period surcharge per class required by section 8(a)(3) of the Act and § 2.6.

* * * * *

■ 3. Revise § 2.161(d)(2) to read as follows:

§ 2.161 Requirements for a complete affidavit or declaration of continued use or excusable nonuse.

* * * * *

(d) * * *

(2) If the affidavit or declaration is filed during the grace period under section 8(a)(3) of the Act, include the grace period surcharge per class required by § 2.6;

* * * * *

■ 4. Revise § 2.163 to read as follows:

§ 2.163 Acknowledgment of receipt of affidavit or declaration.

The Office will issue a notice as to whether an affidavit or declaration is acceptable, or the reasons for refusal.

(a) If the affidavit or declaration is filed within the time periods set forth in section 8 of the Act, deficiencies may be corrected if the requirements of § 2.164 are met.

(b) A response to the refusal must be filed within six months of the date of

issuance of the Office action, or before the end of the filing period set forth in section 8(a) of the Act, whichever is later. The response must be signed by the owner, someone with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter, in accordance with the requirements of § 2.193(e)(2).

(c) If no response is filed within this time period, the registration will be cancelled, unless time remains in the grace period under section 8(a)(3) of the Act. If time remains in the grace period, the owner may file a complete, new affidavit.

■ 5. Revise § 2.164 to read as follows:

§ 2.164 Correcting deficiencies in affidavit or declaration.

(a) If the affidavit or declaration is filed within the time periods set forth in section 8 of the Act, deficiencies may be corrected, as follows:

(1) *Correcting deficiencies in affidavits or declarations timely filed within the periods set forth in sections 8(a)(1) and 8(a)(2) of the Act.* If the affidavit or declaration is timely filed within the relevant filing period set forth in section 8(a)(1) or section 8(a)(2) of the Act, deficiencies may be corrected before the end of this filing period without paying a deficiency surcharge. Deficiencies may be corrected after the end of this filing period with payment of the deficiency surcharge required by section 8(c) of the Act and § 2.6.

(2) *Correcting deficiencies in affidavits or declarations filed during the grace period.* If the affidavit or declaration is filed during the six-month grace period provided by section 8(a)(3) of the Act, deficiencies may be corrected before the expiration of the grace period without paying a deficiency surcharge. Deficiencies may be corrected after the expiration of the grace period with payment of the deficiency surcharge required by section 8(c) of the Act and § 2.6.

(b) If the affidavit or declaration is not filed within the time periods set forth in section 8 of the Act, the registration will be cancelled.

■ 6. In § 2.168, revise the heading and paragraph (a) to read as follows:

§ 2.168 Affidavit or declaration under section 15 combined with affidavit or declaration under sections 8 or 71, or with renewal application.

(a) The affidavit or declaration filed under section 15 of the Act may also be used as the affidavit or declaration required by section 8, if the affidavit or declaration meets the requirements of

both sections 8 and 15. The affidavit or declaration filed under section 15 of the Act may also be used as the affidavit or declaration required by section 71, if the affidavit or declaration meets the requirements of both sections 71 and 15.

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

■ 7. The authority citation for 37 CFR part 7 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 8. In § 7.6, add paragraph (a)(8) to read as follows:

§ 7.6 Schedule of U.S. process fees.

(a) * * *

(8) For correcting a deficiency in a section 71 affidavit—\$100.00

■ 9. Revise § 7.25(a) to read as follows:

§ 7.25 Sections of part 2 applicable to extension of protection.

(a) Except for §§ 2.22–2.23, 2.130–2.131, 2.160–2.166, 2.173, and 2.181–2.186, all sections in parts 2, 10, and 11 of this chapter shall apply to an extension of protection of an international registration to the United States, including sections related to proceedings before the Trademark Trial and Appeal Board, unless otherwise stated.

■ 10. In § 7.36, revise paragraph (b)(2) and add paragraphs (b)(3) and (c) to read as follows:

§ 7.36 Affidavit or declaration of use in commerce or excusable nonuse required to avoid cancellation of an extension of protection to the United States.

(b) * * *

(2) Within the year before the end of every ten-year period after the date of registration in the United States.

(3) The affidavit or declaration may be filed within a grace period of six months after the end of the deadline set forth in paragraphs (b)(1) and (b)(2) of this section, with payment of the grace period surcharge per class required by section 71(a)(3) of the Act and § 7.6.

(c) For the requirements for the affidavit or declaration, see § 7.37.

■ 11. Revise § 7.37(d)(2) to read as follows:

§ 7.37 Requirements for a complete affidavit or declaration of use in commerce or excusable nonuse.

* * * * *

(d) * * *

(2) If the affidavit or declaration is filed during the grace period under section 71(a)(3) of the Act, include the grace period surcharge per class required by § 7.6;

* * * * *

■ 12. Revise § 7.39 to read as follows:

§ 7.39 Acknowledgment of receipt of and correcting deficiencies in affidavit or declaration of use in commerce or excusable nonuse.

The Office will issue a notice as to whether an affidavit or declaration is acceptable, or the reasons for refusal.

(a) A response to the refusal must be filed within six months of the date of issuance of the Office action, or before the end of the filing period set forth in section 71(a) of the Act, whichever is later. The response must be signed by the holder, someone with legal authority to bind the holder (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter, in accordance with the requirements of § 2.193(e)(2).

(b) If no response is filed within this time period, the extension of protection will be cancelled, unless time remains in the grace period under section 71(a)(3) of the Act. If time remains in the grace period, the holder may file a complete, new affidavit.

(c) If the affidavit or declaration is filed within the time periods set forth in section 71 of the Act, deficiencies may be corrected, as follows:

(1) *Correcting deficiencies in affidavits or declarations timely filed within the periods set forth in sections 71(a)(1) and 71(a)(2) of the Act.* If the affidavit or declaration is timely filed within the relevant filing period set forth in section 71(a)(1) or section 71(a)(2) of the Act, deficiencies may be corrected before the end of this filing period without paying a deficiency surcharge. Deficiencies may be corrected after the end of this filing period with payment of the deficiency surcharge required by section 71(c) of the Act and § 7.6.

(2) *Correcting deficiencies in affidavits or declarations filed during the grace period.* If the affidavit or declaration is filed during the six-month grace period provided by section 71(a)(3) of the Act, deficiencies may be corrected before the expiration of the grace period without paying a deficiency surcharge. Deficiencies may be corrected after the expiration of the

grace period with payment of the deficiency surcharge required by section 71(c) of the Act and § 7.6.

(d) If the affidavit or declaration is not filed within the time periods set forth in section 71 of the Act, the registration will be cancelled.

Dated: June 18, 2010.

David J. Kappos,

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

[FR Doc. 2010–15305 Filed 6–23–10; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2008–0920; FRL–8824–6]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 17 chemical substances which were the subject of premanufacture notices (PMNs). Two of these chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. This action requires persons who intend to manufacture, import, or process any of these 17 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This rule is effective on August 23, 2010. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on July 8, 2010.

Written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs must be received on or before July 26, 2010 (see Unit VI. of the **SUPPLEMENTARY INFORMATION**).

For additional information on related reporting requirement dates, see Units I.A., VI., and VII. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0920, by one of the following methods: