

resulting time period may not be more than five years.

141. *Comment:* One comment suggested that the Commissioner identify a senior person who is charged with approving all reductions in extension of patent term rather than leaving the decision to the examiner or the SPE.

One comment questioned who will make the calculation of the period of patent term extension under § 1.701 and whether that calculation can be challenged and by whom.

Response: It is contemplated that the period of patent term extension calculated and any reduction in the extension of patent term will not be made by an examiner. It is noted that the period of patent term extension will be identified in the Notice of Allowance and Issue Fee Due and if applicant disagrees with the period, applicant may request further review by way of a petition under § 1.181. If an error is noted after the patent issues, patentee or any third party may seek correction of the period of patent term extension granted by filing a request for a Certificate of Correction pursuant to § 1.322.

142. *Comment:* One comment questioned whether a challenge to the period of patent term extension calculated by the PTO under § 1.701 would be required to be made within a fixed period.

Response: No. However, the longer applicant delays filing a petition under § 1.181 challenging the period of extension calculated by the PTO, the less likely any error will be corrected before the patent is issued with the error printed on the patent. If the patent issues with an incorrect period of extension, applicant should file a request for a Certificate of Correction pursuant to § 1.322 instead of a petition under § 1.181.

143. *Comment:* One comment suggested that § 1.701(d)(2) be amended to require PTO to notify applicant in writing of any intent to reduce the term extension for lack of due diligence, stating the specific basis, and provide applicant with a reasonable opportunity to respond.

Response: The suggestion has not been adopted. The period of patent term extension will be identified in the Notice of Allowance and Issue Fee Due and if applicant disagrees with the period, applicant may request further review by way of a petition under § 1.181.

144. *Comment:* One comment suggested that a cover sheet for use in recording assignments be included in the final rules package as an addendum.

Response: The suggestion has not been adopted. A sample cover sheet for use in recording assignments was published as Appendix B in the **Federal Register** on July 6, 1992, at 57 FR 29634 and in the Official Gazette on July 28, 1992, at 1140 Off. Gaz. Pat. Office 63 and may be obtained from Assignment Branch.

Other Considerations

This final rule change is in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., Executive Order 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. This final rule has been determined not to be significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these final rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these changes is to provide a procedure for domestic applicants to quickly and inexpensively file a provisional application. The filing date of the provisional application will not be used to measure the term of a patent granted on an application which claims the earlier filing date of the provisional application.

The Patent and Trademark Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in E.O. 12612.

These final rules contain collections of information subject to the requirements of the Paperwork Reduction Act (Act). The provisional application has been approved by the Office of Management and Budget under control numbers 0651-0031 and 0651-0032. The cover sheet is approved under OMB control number 0651-0037. The cover sheet is necessary to expedite the processing of a provisional application and improve quality. Public reporting burden for the collection of information on the cover sheet is estimated to average 12 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Office of Assistance Quality and

Enhancement Division, Patent and Trademark Office, Washington, D.C. 20231, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (ATTN: Paperwork Reduction Act Projects 0651-0031, 0651-0032, and 0651-0037).

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small businesses.

37 CFR Part 3

Administrative practice and procedure, Inventions and patents, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 37 CFR Parts 1 and 3 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. Section 1.1 is amended by adding new paragraph (i) to read as follows:

§ 1.1 All communications to be addressed to Commissioner of Patents and Trademarks.

* * * * *

(i) The filing of all provisional applications and any communications relating thereto should be additionally marked "Box Provisional Patent Application."

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3. Section 1.9 is amended by revising paragraph (a) to read as follows:

§ 1.9 Definitions.

(a)(1) A national application as used in this chapter means a U.S. application for patent which was either filed in the Office under 35 U.S.C. 111, or which entered the national stage from an international application after compliance with 35 U.S.C. 371.

(2) A provisional application as used in this chapter means a U.S. national application for patent filed in the Office under 35 U.S.C. 111(b).

(3) A nonprovisional application as used in this chapter means a U.S. national application for patent which was either filed in the Office under 35 U.S.C. 111(a), or which entered the national stage from an international