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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18014; Airspace Docket No. 04–ACE–43]

Modification of Class E Airspace; Fairbury, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Fairbury, NE.

EFFECTIVE DATE: 0901 UTC, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 15, 2004 (69 FR 42331). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 30, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 18, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–19735 Filed 8–27–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Parts 12 and 24

[CBP Decision 04–29]

RIN 1651–AA36

Patent Surveys

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs and Border Protection (CBP) Regulations to eliminate patent surveys. The change is made based on a lack of demand for the program due to diminishing effectiveness within the current statutory scheme and other changed circumstances. CBP will continue to enforce the law and regulations it is responsible for enforcing regarding the importation of patented merchandise registered with CBP, and importers and others may continue to avail themselves of the procedures administered by the International Trade Commission regarding the importation of patent-infringing merchandise.

DATES: Effective September 29, 2004.

FOR FURTHER INFORMATION CONTACT: George Frederick McCray, Chief, Intellectual Property Rights Branch (202) 572–8710.

SUPPLEMENTARY INFORMATION:

Background

On March 20, 2003, the U.S. Customs Service (Customs) published a notice of proposed rulemaking (NPRM) in the **Federal Register** (68 FR 13636) proposing to amend the Customs Regulations (19 CFR Chapter I) to eliminate patent surveys. The NPRM explained that patent surveys are conducted by CBP to assist registered patent owners in pursuing enforcement actions by the International Trade Commission (ITC) under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337; hereafter, section 1337), pertaining to unfair practices in import trade.

It is noted that Customs was made a component of the Department of Homeland Security and is now known as U.S. Customs and Border Protection (CBP). While this document is being issued by CBP, the agency is sometimes referred to as Customs in this document to reflect historical accuracy.

The Statute

Under section 1337, it is unlawful to, among other things, import merchandise into the United States that infringes a valid and enforceable United States patent. Under the statute, the ITC, after conducting a proper investigation, is authorized to exclude patent-infringing merchandise from entry into the United States. (19 U.S.C. 1337(a)(1)(B)(i) and 19 U.S.C. 1337(d).) The statute also authorizes the ITC, under certain circumstances, to issue cease and desist orders, impose civil penalties, and order seizure and forfeiture relative to unlawful acts under the statute.

CBP plays a supporting role with respect to patent infringement cases under section 1337. Where the ITC has determined that merchandise infringes a patent and has ordered that the patent-infringing merchandise be excluded from entry, CBP will refuse entry of the merchandise covered by the order after notification by the ITC (see 19 CFR 12.39). In addition to enforcing ITC exclusion orders, CBP enforces ITC seizure/forfeiture orders (19 U.S.C. 1337(i)(2)) and certain court orders.

Patent Surveys

In 1956, while under no statutory mandate to do so, Customs promulgated a regulation designed to assist patent holders in obtaining information they would need to seek action by the ITC under section 1337. In Treasury Decision (T.D.) 54087, published in the **Federal Register** (21 FR 3267) on May 18, 1956, Customs amended § 24.12(a) of the Customs Regulations by adding paragraph (3), under which Customs would issue the names and addresses of importers of articles appearing to infringe a registered patent. The T.D. explained that the purpose of the new provision was to assist the owner of a registered patent in obtaining data upon

which to file a complaint with the ITC under section 1337 charging unfair methods of competition and unfair acts in the importation of merchandise infringing the patent. The provision required an application by the patent owner and set forth appropriate fees.

In T.D. 56137, published in the **Federal Register** (29 FR 4909) on April 8, 1964, Customs amended part 12 of the regulations to add new § 12.39a to prescribe the procedure and requirements for obtaining the names and addresses of importers of merchandise appearing to infringe a patent (thereby transferring authority for the procedure from § 24.12(a)(3)). The new section referred to the procedure as a patent survey and provided patent survey requestors three survey periods varying in length of time: 2, 4, and 6 months. The fees for patent surveys remained under § 24.12(a)(3).

Changed Circumstances

In 1956, when the patent survey program was introduced, Customs processed just over a million entries. Since then, the volume of entries has increased dramatically, and CBP now receives over 23 million entries per year (based on 2001 statistics). At the same time, as a result of changes in applicable law and practice, the old system under which Customs officers were responsible for completing the processing of each entry has been replaced with what, in practice, is a self-assessment system based on electronic reporting without paper invoices. These changed circumstances have severely impacted the ability of CBP to adequately administer the patent survey program, resulting in CBP's reconsideration of the program's viability.

Effectiveness of the Patent Survey Program

In addition, the effectiveness of the program has been challenged. The patent survey seeks to identify importers who may be importing merchandise that appears to infringe a patent. After initial approval of a survey request (application), CBP determines which tariff provisions may apply to particular patented merchandise, a task complicated by the fact that patented articles are often new or novel commodities. Often, these identified tariff provisions are broad or basket provisions, with the broad provisions covering several similar articles and the basket provisions covering a wide breadth of articles that do not fit under more specific subheadings. Thus, searching for importers of merchandise appearing to infringe the patent often produces over-broad results which lead to the identification of importers who in fact do not import merchandise appearing to infringe the patent at issue. These searches are of questionable value to the patent owner and do not produce results that justify the use of CBP resources.

Value of the Program

Further evidence of the limited value of the patent survey program is demonstrated by the fact that CBP processes relatively few patent survey requests per year (research indicates approximately 10 requests processed per year). The few number of survey requests received call into question the value of the program. A greater number of survey requests might suggest a greater need among the importing public and a more legitimate basis for CBP's investment of time and resources. Also, no comments were received in response to the proposed rule, requesting retention of the program. The apparent lack of need, and interest, is another reason to discontinue the program.

Absence of Statutory Mandate

Finally, CBP notes that section 1337 does not mandate that CBP perform patent surveys. An examination of the general scheme of section 1337 shows that the statute places primary authority in the ITC, rather than CBP, to enforce its provisions. The ITC is charged with the responsibility to conduct investigations and make determinations regarding violations and sanctions under the statute. In the context of section 1337, CBP is not authorized to take any action regarding apparently patent-infringing merchandise without the ITC first taking action or without receiving a notice, request, or instruction from the ITC, a clearly secondary role.

Thus, the promulgation of the patent survey regulation (first in § 24.12(a)(3) and then in § 12.39a), though intended to support section 1337, is not rooted in explicit statutory authority. Rather, the regulatory program was initiated in the exercise of agency discretion under the general authority of 19 U.S.C. 1624. As a discretionary program, CBP is not compelled by law to continue performing patent surveys, especially when their value appears to have diminished, resources are scarce, and the agency is faced with elevated national security priorities.

Comments

The comment period ended on May 21, 2003. No comments were received.

Conclusion

In the NPRM, Customs examined the options of discontinuing the program or expending scarce resources to make the program more effective. After careful consideration, CBP has determined that committing additional resources to the program would be difficult, given current enforcement and security priorities, and raising fees to cover the cost of patent surveys would likely reduce participation even more. For these reasons, in addition to the lack of interest in the program, lack of comments (received in response to the proposed rule) requesting continuation of the program, and the above mentioned concerns relating to ambiguous legal authority, CBP is amending the regulations to discontinue the patent survey program. Thus, this document removes § 12.39a from the CBP Regulations and makes conforming changes to § 24.12(a) by removing paragraph (3).

This amendment to the regulations is being issued in accordance with § 0.1(b)(1) of the CBP Regulations (19 CFR 0.1(b)(1)) pertaining to the authority of the Secretary of Homeland Security (or his/her delegate) to prescribe and approve regulations relating to customs revenue functions that are not set forth in paragraph 1(a)(i) of Treasury Department Order No. 100–16 (May 15, 2003) (see CBP Decision 03–24, 68 FR 51868, August 28, 2003).

Regulatory Flexibility Act

Under 19 U.S.C. 1337 (section 1337), the ITC, after conducting a proper investigation, is authorized to exclude patent-infringing merchandise from entry into the United States. (19 U.S.C. 1337(a)(1)(B)(i) and 19 U.S.C. 1337(d).) CBP plays a supporting role with respect to patent infringement cases under section 1337. Where the ITC has determined that merchandise infringes a patent and has ordered that the patent-infringing merchandise be excluded from entry, CBP will refuse entry of the merchandise covered by the order after notification by the ITC (see 19 CFR 12.39). Neither ITC nor CBP is required to conduct patent surveys under the statute. They are not necessary to ITC investigations or enforcement action or to the fulfillment of CBP's responsibilites under the statute.

As set forth in the preamble, CBP receives very few patent survey requests under the regulations; the figure is approximately 10 per year. No comments were received in response to the proposed rule requesting retention of the program. In addition, most surveys do not produce beneficial

results, and the beneficial results that are produced are of limited value. Thus, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments to the CBP Regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. The regulation would merely discontinue the patent survey procedure for reasons related to changed circumstances, disuse, and ineffectiveness. Accordingly, these amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

Since CBP receives so few requests for patent surveys, and elimination of the program will not preclude a patent owner from petitioning the ITC for an investigation and action to enforce its patent, CBP concludes that this rule does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866. The rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Because patent surveys are not an essential element of the ITC enforcement process, elimination of the program in this final rule does not create serious inconsistency or otherwise interfere with an action taken or planned by another agency. It is noted that no comments were received, indicating little if any concern by patent owners that access to ITC enforcement will be curtailed or the ITC's procedures will be affected by the final rule. Also, the rule does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, as patent surveys have nothing to do with any of these matters; nor does the rule raise novel legal policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, Customs and Border Protection. However, personnel from other offices contributed in its development.

List of Subjects

19 CFR Part 12

Entry of merchandise, Customs duties and inspection, Fees assessment, Imports, Patents, Reporting and recordkeeping requirements.

19 CFR Part 24

Accounting, Customs duties and inspection, Fees, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ For the reasons stated in the preamble, parts 12 and 24 of the Customs Regulations (19 CFR parts 12 and 24) are amended as follows:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66; 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

§ 12.39a [Removed]

■ 2. Part 12 of the CBP Regulations is amended by removing § 12.39a.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 3. The general authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

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Section 24.12 also issued under 19 U.S.C. 1524, 46 U.S.C. 31302;

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§ 24.12 [Amended]

■ 4. Section 24.12 of the CBP Regulations is amended by removing paragraph (a)(3).

Dated: August 24, 2004.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 04–19665 Filed 8–27–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 111

[C.B.P. Dec. No. 04–30]

RIN 1651–AA46

Customs Broker License Examination Dates

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule the interim rule amending the Customs and Border Protection (CBP) regulations to allow CBP to publish a notice changing the date on which a semi-annual written examination for an individual broker's license will be held when the normal date conflicts with a holiday, religious observance, or other scheduled event.

EFFECTIVE DATE: August 30, 2004

FOR FURTHER INFORMATION CONTACT: Alice Buchanan, Office of Field Operations (202–344–2673).

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker's licenses and permits, and provides for the taking of disciplinary action against brokers that have engaged in specified types of infractions. In the case of an applicant for an individual broker's license, section 641 provides that the Secretary of the Treasury may conduct an examination to determine the applicant's qualifications for a license. Section 641 also authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of brokers as may be necessary to protect importers and the revenue of the United States and to carry out the provisions of section 641.

Pursuant to the Homeland Security Act of 2002 (Pub. L. 107–296) and Treasury Order No. 100–16, the Secretary of the Department of Homeland Security now has the authority to prescribe the rules and regulations relating to Customs brokers.

The regulations issued under the authority of section 641 are set forth in part 111 of the Customs and Border