

assessing and addressing potential consumer confusion. Such costs and burdens may include changing its mark, investigative costs to determine the nature and extent of use of the similar mark and to assess whether any conflict exists, or cancellation proceedings or other litigation to resolve a dispute over the mark. If a registered mark is not actually in use in the United States, or is not in use on all the goods/services recited in the registration, these costs and burdens may be incurred unnecessarily. Thus, improving the accuracy and reliability of the trademark register helps reduce such costs and burdens, and thereby benefits the public.

The current requirement to file an affidavit of use or excusable nonuse during the fifth year after registration developed in 1939. Reasons for adding the requirement included removing deadwood from the register, showing that a mark was still in use at the time it became incontestable, and to correspond to English law. *See Trade-Marks: Hearings on H.R. 4744 Before the Subcomm. on Trademarks of the H. Comm. on Patents, 76th Cong. 72-74 (1939).*

For marks registered under Section 44(e) (15 U.S.C. 1126(e)) or Section 66(a) (15 U.S.C. 1141f(a)) of the Trademark Act, no specimen of use in commerce in the United States is required prior to registration. In addition, recent research indicates that a significantly higher percentage of businesses fail during the first two years after their establishment than during the three years that follow. *See SBA Office of Advocacy, Frequently Asked Questions (Jan. 2011), <http://www.sba.gov/sites/default/files/sbfaq.pdf>.* Thus, use of marks registered by such failed businesses may have ceased long before the first Section 8 or 71 affidavit is currently required to be filed. Therefore, the proposed amendment would help ensure the accuracy of the trademark register by more promptly cancelling marks that are not in use.

The USPTO notes that shortening the first filing deadline for Affidavits or Declarations of Use or Excusable Nonuse under Sections 8 and 71 would foreclose the ability that currently exists to combine the filing of an Affidavit or Declaration of Incontestability under Section 15 of the Trademark Act with the first-filed Section 8 or 71 affidavit (*see* 15 U.S.C. 1065). However, the Section 15 affidavit is optional, and it is often filed independently of the Section 8 or 71 affidavit. Moreover, any impact on the ability to file it in combination with a Section 8 or 71 affidavit should be considered within the context of a

more accurate register, where deadwood is removed several years sooner.

Please consider responding to the following questions in your comments:

(1) Is “deadwood” on the trademark register a concern of yours, and what impact do you believe it has?

(2) Do you favor or oppose an amendment to shorten the first filing deadline for Affidavits or Declarations of Use or Excusable Nonuse under Sections 8 and 71 as a means of ensuring the accuracy of the trademark register? (Please explain why.)

(3) If you favor shortening the deadline, what time period do you believe would be most appropriate for the first filing deadline?

(4) Are you concerned that an amendment to the first Section 8 and 71 affidavit deadline would foreclose the ability to combine the filing with the filing of an Affidavit or Declaration of Incontestability under Section 15? What impact do you believe separating these filings would have?

While the USPTO welcomes and values all comments from the public in response to this request, these comments do not bind the USPTO to any further actions related to the comments. Persons submitting written comments should note that the USPTO will not provide “comment and response” analysis, since notice and opportunity for public comment are not required for this notice under 5 U.S.C. 553(b) or any other law.

Dated: August 10, 2012.

David J. Kappos,

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

[FR Doc. 2012-20130 Filed 8-15-12; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO-T-2012-0029]

Notice of Inquiry Regarding Adjustment of Fees for Trademark Applications

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The United States Patent and Trademark Office (“USPTO” or “Office”) is considering adjusting trademark application filing fees so as to promote efficiency for the USPTO and customers by incentivizing complete electronic communication. The USPTO invites the public to submit comments regarding such possible adjustments.

DATES: Written comments must be received on or before October 15, 2012.

ADDRESSES: The USPTO 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 C. Lynch; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia, attention Cynthia C. 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. All comments submitted directly to the Office or provided on the Federal eRulemaking Portal should include the docket number (PTO-T-2012-0029). The comments will be available for public inspection on the USPTO’s Web site at <http://www.uspto.gov>, and will also be available at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included.

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

SUPPLEMENTARY INFORMATION: The USPTO is providing the public, including user groups, with an opportunity to comment on possible adjustments to trademark application fees. In particular, the USPTO is considering adjusting filing fees to incentivize complete electronic communications by reducing the TEAS Plus filing fee and by providing a discount on applications filed using the regular TEAS application form, if the applicant authorizes email communication and agrees to file all responses and other documents electronically during the prosecution of the application. The USPTO is also contemplating increasing the fee for paper applications to more accurately reflect the higher cost of processing such filings.

Please consider responding to the following questions in your comments:

1. Fees for filing an application for registration of a trademark are currently set at:

\$375 per class for filing by a paper application;

\$325 per class for filing electronically using TEAS;

\$275 per class for filing electronically using TEAS Plus (additional requirements apply, including authorizing email communication from the USPTO, agreeing to file all subsequent documents electronically, and selecting goods/services from a pre-approved entry in the U.S. Acceptable Identification of Goods and Services Manual).

Given the objective to increase end-to-end electronic processing of trademark applications, the significantly higher cost of processing paper applications, and the ability of the USPTO to offer some fee reductions, what fee amounts would you consider reasonable for the three existing methods of filing?

2. How much of a discount do you consider appropriate for the proposed TEAS application fee discount if the applicant authorizes email communication and agrees to file all responses and other documents electronically during the prosecution of the application?

3. If you generally file trademark applications using TEAS, but not TEAS Plus, how much of a proposed discount would motivate you to authorize email communication and agree to file all responses and other documents electronically during the prosecution of a trademark application?

4. If the TEAS Plus fee were reduced and remained the lowest fee, and the discount TEAS option were also offered, what would be the impact on the TEAS Plus filing level—i.e. would you be more likely to choose TEAS Plus as the lowest fee, or to select the discount TEAS option with its less burdensome requirements?

5. The cost of processing paper filed applications is substantially higher than electronically filed applications. If you generally file paper trademark applications, would you continue to do so even if the paper application fee were to increase, and why?

6. What advantages and disadvantages do you see in a fee structure that includes the TEAS application fee discount and a significantly higher fee for paper-filed applications?

While the USPTO welcomes and values all comments from the public in response to this notice, these comments do not bind the USPTO to any further actions related to the comments.

Persons submitting written comments should note that the USPTO will not provide “comment and response” analysis, since notice and opportunity for public comment are not required for

this notice under 5 U.S.C. 553(b) or any other law.

Once the USPTO receives comments, the USPTO will decide whether to propose a change in the fees. If the USPTO decides to propose a fee change, the Office will provide an opportunity for public comment in a Notice of Proposed Rulemaking. The USPTO would intend to use the procedures set forth in Section 10 of the Leahy-Smith America Invents Act (“AIA”) for these possible fee changes. Leahy-Smith America Invents Act, Public Law 112–29, § 10, 125 Stat. 284, 316–17 (2011). Those Section 10 procedures include: providing any proposed fee to the Trademark Public Advisory Committee (“TPAC”) prior to issuing a Notice of Proposed Rulemaking; providing at least 30 days for TPAC to deliberate, consider, and comment on such proposal; holding a public hearing relating to such proposal; and making available a written report from TPAC setting forth their comments, advice, and recommendations, which the USPTO shall consider before setting or adjusting fees. See AIA § 10(d).

Dated: August 10, 2012.

David J. Kappos,

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

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DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–P–2012–0033]

Notice of Roundtable on the Implementation of the First Inventor to File Provisions of the Leahy-Smith America Invents Act

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The United States Patent and Trademark Office (USPTO) published a notice of proposed rulemaking and a notice of proposed examination guidelines to implement the first-inventor-to-file provisions of the Leahy-Smith America Invents Act (AIA). The USPTO plans to conduct a roundtable to obtain public input from organizations and individuals on issues relating to the USPTO’s proposed implementation of the first-inventor-to-file provisions of the AIA. The USPTO plans to invite a number of roundtable participants from among patent user groups, practitioners, industry, independent inventor

organizations, academia, and government. The roundtable also is open for any member of the public to provide input.

DATES: The roundtable will be held on Thursday, September 6, 2012, beginning at 1:30 p.m. Eastern Daylight Time (EDT), and ending at 4:30 p.m. EDT.

The deadline for receipt of written comments in response to the notice of proposed rulemaking and notice of proposed examination guidelines to implement the first-inventor-to-file provisions of the AIA is October 5, 2012.

ADDRESSES: The roundtable will be held at the USPTO in the Madison Auditorium on the concourse level of the Madison Building, which is located at 600 Dulany Street, Alexandria, Virginia 22314.

Comments on the notice of proposed rulemaking should be sent by electronic mail message over the Internet addressed to: fitf_rules@uspto.gov. Comments may also be submitted by postal mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Susy Tsang-Foster, Legal Advisor, Office of Patent Legal Administration.

Comments on the proposed examination guidelines should be sent by electronic mail message over the Internet addressed to:

fitf_guidance@uspto.gov. Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Mary C. Till, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

Comments on the notice of proposed rulemaking and the proposed examination guidelines may also be sent by electronic mail message over the Internet 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.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be