

Acquiree	Fiscal year end	Date of acquisition	Highest significance at acquisition (percent)
A.....	3/31	1/1/X7.....	60
B.....	7/31	4/1/X7.....	45
C.....	9/30	9/1/X7.....	40
D.....	12/31	2/1/X8.....	21
E.....	3/31	11/1/X8.....	11
F.....	12/31	To be acquired.	11

The following table reflects the application of the significance tests to the combined financial information at the time the registration statement is filed.

(In percent)

Component entity	Significance of			Highest level of significance
	Assets	Earnings	Investment	
A.....	12	23	12	23
B.....	10	21	10	21
C.....	21	3	4	21
D.....	10	5	13	13
E.....	4	9 loss	3	9
F.....	2	11	6	11

Year 1 (most recent fiscal year)—Entity E is the only acquiree for which pre-acquisition financial statements may be omitted for the latest year since significance for each other entity exceeds 10% under one or more test.

Year 2 (preceding fiscal year)—Financial statements for E and F may be omitted since their combined significance is 20% and no other combination can be formed with E which would not exceed 20%.

Year 3 (second preceding fiscal year)—Financial statements for D, E and F may be omitted since their combined significance of these entities is 33%^{*} and no other combination can be formed with E and F which would not exceed 40%.

The financial statement requirements must be satisfied by filing separate pre-acquisition audited financial statements for each entity that was not included in the consolidated financial statements for the periods set forth above. The following table illustrates the requirements for this example.

^{*} Combined significance is the sum of the significance of D's investment test (13%), E's earnings test (9%) and F's earnings test (11%).

Component entity	Date of acquisition	Minimum financial statement requirement	Period in consolidated F/S	Separate pre-acquisition audited F/S
Registrant.....	N/A	33	36	
A.....	1/1/X7	33	24	9
B.....	4/1/X7	33	21	* 12
C.....	9/1/X7	33	16	17
D.....	2/1/X8	21	11	10
E.....	11/1/X8		2	
F.....	([†])	9		9
acquired				

* The audited preacquisition period need not correspond to the acquiree's pre-acquisition fiscal year. However, audited periods must not be for periods in excess of 12 months.

[†] To be acquired.

[FR Doc. 88-27365 Filed 11-25-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Area, Thames River in Waterford/Groton, CT

AGENCY: U.S. Army Corps Of Engineers, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule invites comments on the Department of the Army's proposal to establish a naval restricted area in the waters of the Thames River in the vicinity of the New London Submarine Base for the increased safety and security of Government owned facilities and vessels. These regulations will normally have minimal impact on vessel movements within the designated restricted area but will prohibit vessels from entering the restricted area when notified by submarine base personnel that such use within the area will interfere with submarine maneuvering, operations or security.

DATES: Interim final rule effective November 28, 1988. Written comments must be submitted on or before December 28, 1988.

ADDRESSES: HQDA, CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Lee at (617) 647-8158 or Mr. Ralph T. Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: The Commanding Officer, Naval Submarine Base, New London, Connecticut, has requested the Department of the Army

establish the restricted area in the Thames River, the dividing line between the towns of Groton and Waterford. The restricted area covers the river area immediately adjacent to the submarine base and generally extends to the western limits of the dredged channel. The northernmost and southernmost portions of the restricted area extend beyond the dredged channel limits to the western shore. A detailed description of the restricted area boundaries is in the regulations ((a) The area).

On February 19, 1987, the New England Division Engineer issued a public notice to all known interested parties soliciting comments on this proposal and on March 30, 1987, the division engineer held a public hearing on the proposed restricted area. Due to the amount of opposition expressed in response to the public notice and at the hearing, the Navy scaled down its proposal. The revised restricted area is contained in this interim final regulation.

In view of the extensive public involvement at the local level and immediate needs of the Navy for improved security, we have found that notice of proposed rulemaking and public procedures thereto are unnecessary and impracticable and good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register**.

Economic Assessment and Certification

This rule is issued with respect to a military function of the Defense Department and provisions of E.O. 12291 do not apply. I hereby certify that this interim final regulation will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above the Department of the Army is amending Part 334 of Title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.75 is added as follows:

§ 334.75 Thames River, Naval Submarine Base New London, Restricted Area.

(a) *The area:* The open waters of the Thames River approximately 5 nautical miles upriver from its mouth along the boundary between Groton and

Waterford, Connecticut, within an area bounded as follows:

From a point on the eastern shore at latitude 41° 24' 14.4" N, longitude 72° 05' 38.0" W then northerly along the coast to latitude 41° 24' 20.0" N, longitude 72° 05' 37.9" W then westerly across the river to a point on the western shore at latitude 41° 24' 20.0" N, longitude 72° 05' 55.5" W then southerly along the coast to a point on the western shore at latitude 41° 24' 5.0" N, longitude 72° 05' 55.7" W then easterly to the western edge of the dredged channel to a point located at latitude 41° 24' 04.1" N, longitude 72° 05' 51.2" W then southerly along the western edge of the dredged channel to a point at latitude 41° 24' 00" N, longitude 72° 05' 52.6" W then southerly along the western edge of the dredged channel to a point located at latitude 41° 23' 57.1" N, longitude 72° 05' 52.5" W then southerly to buoy "11" located at a point at latitude 41° 23' 45.6" N, longitude 72° 05' 53.7" W then southerly to buoy "B" on the northeastern shore of Mamacoke Hill to a point at latitude 41° 23' 33.8" N, longitude 72° 05' 53.7" W then southerly along the shore to buoy "A" at latitude 41° 23' 25.0" N, longitude 72° 05' 45.4" W then southeasterly to buoy "9" at a point located at latitude 41° 23' 15.0" N, longitude 72° 05' 35.0" W then easterly to a point on the eastern shore at latitude 41° 23' 15.0" N, longitude 72° 05' 17.9" W then northerly along the shore to a point on the eastern shore at latitude 41° 23' 15.8" N, longitude 72° 05' 17.9" W then along the following points:

Latitude	Longitude
41° 23' 15.8" N	72° 05' 22.0" W
41° 23' 25.9" N	72° 05' 29.9" W
41° 23' 33.8" N	72° 05' 34.7" W
41° 23' 37.0" N	72° 05' 38.0" W
41° 23' 41.0" N	72° 05' 40.3" W
41° 23' 47.2" N	72° 05' 42.3" W
41° 23' 53.8" N	72° 05' 43.7" W
41° 23' 59.8" N	72° 05' 43.0" W
41° 24' 12.4" N	72° 05' 43.2" W

Then to the point of beginning on the eastern shore.

(b) *The regulations.* (1) Vessels and other watercraft within the designated navigation channel may proceed through the restricted area at normal operating speeds without stopping. Vessels and watercraft may also utilize the water area within the restricted area located between the western edge of the designated channel and the western shore for fishing, anchoring and other recreational uses. However, all vessels and watercraft, except U.S. military vessels must leave the restricted area when notified by personnel of the New London Submarine Base that such use will interfere with submarine maneuvering, operations or security.

(2) Commercial fishermen and shell fishermen may fish within the restricted area provided their vessels display registration numbers issued by the Naval Submarine Base, New London,

Connecticut. The registration numbers may be obtained by contacting the Commanding Officer, Naval Submarine Base New London. All commercial fishermen and shell fishermen must also leave the restricted area when notified by personnel of the New London Submarine Base that such use will interfere with submarine maneuvering, operations or security.

(3) Vessels which are owned, operated or sponsored by local, state municipalities or academic institutions preparing for or participating in a water sport or water related recreational event sponsored by those local or state municipalities or academic institutions, or private or commercial vessels engaged in observing the conduct of the above event shall be exempt from the restrictions above, providing:

(i) The Commanding Officer, Naval Submarine Base New London, and the Coast Guard Captain of the Port are advised in writing at least 48 hours in advance of the event, or

(ii) The event was publicized in such a manner that the local public in general had a reasonable opportunity to learn of the event 48 hours in advance.

(iii) The regulations in this section shall be enforced by the Commander, U.S. Naval Submarine Base New London, Connecticut, and such agencies as he/she may designate.

Date: November 17, 1988.

Patrick J. Kelly,

Brigadier General, USA, Director of Civil Works.

[FR Doc. 88-27337 Filed 11-25-88; 8:45 am]

BILLING CODE 3710-06-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 80108-8200]

Miscellaneous Changes in Patent Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office is amending its regulations to (1) correct certain rules to conform to previous changes in other rules, (2), require all correspondence directed to the Patent and Trademark Office concerning a patent application to include the series code and serial number or serial number and filing date, (3) provide for the indication of copyright and mask work protection in patent applications, (4) require that any

necessary corrections to drawings be made only by submission of new or replacement drawings, (5) provide in limited situations for the use of color drawings in utility patent applications, (6) prohibit the use of broken lines in design patent application drawings to show hidden planes and surfaces, and (7) provide for a refund of a portion of the preliminary examination fee where the Demand is withdrawn. The change pertaining to the drawings would remove any need for patent applicants or their representatives to borrow drawings filed in patent applications from the Office after the effective date of the rule change for purposes of making corrections.

EFFECTIVE DATE: January 1, 1989. The non-return of drawings provision of § 1.85(b) will apply to drawings in patent applications filed after January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Louis O. Maassel by telephone at (703) 557-3070 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Proposed rulemaking requesting comment was published on May 9, 1988 in the *Federal Register* at 53 FR 16522-16527 and on May 24, 1988 in the *Official Gazette* at 1090 O.G. 57-62.

An oral hearing was conducted on July 21, 1988 to receive comments.

Written comments were received from 5 patent law groups, 2 patent law firms and 6 individuals. One person also presented oral testimony.

No comments were received relating to the proposed amendment of §§ 1.4, 1.5(b), 1.53(d), 1.56, 1.81, 1.84 (j) and (l), 1.152, 1.378, 1.421 and 1.480.

The comments received relating to amendments to particular sections and replies thereto are listed below.

Comments Relating to Section 1.5(a)

Comment. Six comments indicated that they considered the punishment of returning papers with improper identification as too harsh a penalty, since such return could result in the necessity of paying extension of time fees or revival of an abandoned application.

Reply. The return of papers with improper identification is not intended to serve as punishment or a penalty, but as a solution to a major problem. In fact, most of the improperly identified papers are not ones for which a time period is running, e.g., priority papers, information disclosure statements, status inquiries, etc. The Patent and

Trademark Office's (PTO) goal is to match papers with the appropriate application as quickly as possible. The practice of the PTO has been to attempt to match papers with the correct application by using the Patent Application Locating and Monitoring (PALM) System to conduct a search by applicant's name. Such a search is very slow and merely lists all application numbers under the name of the inventor. These application numbers must then be individually checked to attempt to match any other identifying information found on the paper. If this process is unsuccessful, attempts are made to reach the sender by telephone. Telephone calls usually require further followup since the paper cannot usually be identified immediately. Frequently, the serial number is not even available to the sender since application-related papers are being sent to the PTO before notification of serial number has been received. For papers not successfully matched after these attempts, the process of using PALM and making telephone calls is repeated days and weeks later. Despite the considerable effort and resources applied to matching papers, there are still thousands of unmatched papers. Undoubtedly, many were followed up by status inquiries or complaint letters from the senders, subsequent PTO searches for missing papers, and resubmissions by senders, some with petitions or extension of time fees. This waste of resources by both the PTO and the applicants is a major concern. Since the goal is to match papers as quickly and efficiently as possible, and not to institute a harsh penalty, the final rule was modified. Papers which are not properly identified will be returned, but if they are resubmitted to the PTO within two weeks of the date they are returned by the PTO, the original date of receipt will be retained without the need for paying fees for extension of time or revival of an abandoned application. Where no return address is available, the papers will be retained for a reasonable period of time to await any followup correspondence. If no followup correspondence is received within a reasonable period of time, the papers will be destroyed.

Comment. Three comments included the proposal that the filing date and serial number be accepted as meeting the requirements of § 1.5(a).

Reply. This proposal has been adopted in the final rule.

Comment. One comment proposed that implementation of the proposal be delayed for one year to provide

sufficient time to allow applicants to adapt to the requirements.

Reply. The requirements are believed to be quite simple and are already met by almost all papers filed in the PTO. Therefore, an extended period of time to adapt is not seen to be necessary or appropriate.

Comment. Two comments suggested that a procedure be developed under which an applicant could resubmit a corrected returned paper with fee in a timely manner, and receive the benefit of the date of the original submission as its filing date.

Reply. The substance of this suggestion has been adopted in final § 1.5(a), but without the charge of a fee. The final rule provides resubmission of a returned paper with proper identification within two weeks of the PTO mailing date of the letter returning the paper to the sender to resubmit the paper and retain the benefit of the filing date of the original submission. If desired, the resubmission could be mailed under the certificate of mailing procedure of § 1.8 or the "Express Mail" procedure of § 1.10.

Comment. Three comments suggested that a form or notice be sent, with a time limit set for return of appropriate identification with minimal fee or surcharge.

Reply. The proposal would require the PTO to retain the unmatched papers in some kind of order, probably alphabetically by inventor name and/or by receipt date, so that responses could be matched. A double matching of all papers would be necessary. The responses with the appropriate identification would have to be matched to the original papers submitted, then these would have to be matched with the applications. If responses with appropriate identification did not reference the fact that a notice had been sent, they may not be associated with the original, again resulting in more unmatched papers. Accordingly, the proposal was not adopted.

Comment. One comment indicated that including the word "must" with respect to providing the serial number and series code is too severe a requirement.

Reply. The current rules in 37 CFR 1.5 state such identification "should" be on application-related papers. This term has apparently been too permissive and has contributed to the problem. The use of "must" is believed to be sufficiently strong to aid in resolving the problem.

Comment. One comment included the proposal that a wrong serial number be considered as a defective execution

under 35 U.S.C. 26 which could be corrected without loss of filing date.

Reply. The legislative history of 35 U.S.C. 26 is quite clear that the intent of the section was to remedy problems only in the execution of oaths and declarations.

Comment. Two comments questioned the meaning of "series code."

Reply. The series code is the two digit number preceding the serial number on the application filing receipt. A new series code is assigned each time a new series of six digit serial numbers is begun. The current series code is "07". It appears before the serial number, for example 07/123,456. An illustrative example is also included in the final rule.

Comment. One comment included the proposal that a more appropriate name for the combination of series code and serial number would be "application number."

Reply. This proposal has been adopted in the final rule.

Comment. One comment raised the question as to whether correspondence relating to a patent application should contain both the heading "PATENT" as suggested in the helpful hints and "PATENT APPLICATION" as called for in 1.5(a).

Reply. Only "PATENT APPLICATION" should be used on patent application correspondence. This should be placed in an obvious location on the top page.

Comment. One comment noted that the return post card only contains the serial number and not the series code.

Reply. The PTO plans to begin identifying an eight-digit application number on return post cards. The series code will be the first two digits, followed by a slant "/" and the six digit serial number. Although the series code has not been stamped along with the serial number on the return post card used by many applicants, the series code changes only once about every 7 or 8 years when a new set of serial numbers is begun with 000,001. Therefore, until the eight-digit application number is stamped on return post cards, the current series code "07" can be used along with the serial number currently stamped on the post card.

Comment. Three comments suggested that the rules provide that a paper without proper identification be returned only if the PTO found it impossible to match the paper to a particular application file.

Reply. Attempts to match improperly identified papers with a particular application file is very time consuming

and experience has shown that the benefits of such time consuming effort are not worth the effort expended.

Comment. One comment questioned the meaning of "such information" in the second sentence of § 1.5(a).

Reply. "Such information" means the items referred to in the first sentence, namely, the series code and serial number, serial number and filing date, or international application number.

Comment. One comment indicated that the PTO may not return a paper in a timely manner.

Reply. Although no assurance can be given as to the prompt return of all improperly identified papers, such papers will be returned in most instances from the PTO Mail Room within one day of the opening of the envelopes containing the papers and discovery of incomplete identification. Also, the time for resubmission of a returned paper is calculated from the PTO mailing date so that no injury would result from a prompt resubmission.

Comment. One comment indicated that if the filing receipt is delayed or lost, it would preclude timely status inquiries or cause delays in preliminary matters such as a request for a foreign filing license.

Reply. A self-addressed return post card, with proper postage, can be used to obtain early notification of the application number.

Comments Relating to Section 1.53

Comment. One comment pointed out inconsistent wording between proposed § 1.53 and the explanatory comments in the notice of proposed rulemaking.

Reply. The apparent inconsistency has been corrected.

Comments Relating to Sections 1.71 and 1.84(o)

Comment. One comment raised a question whether the PTO should make a comment as to the legal sufficiency of a copyright notice mentioned in § 1.71 since the PTO does not administer the copyright law.

Reply. An indication of what is considered to be legally sufficient copyright notice was included to assist applicants who may not be familiar with the copyright law.

Comments Relating to Section 1.84(a)

Comment. Five comments were received objecting to the prohibition of photolithographs as drawings.

Reply. The final rule does not prohibit photolithographs as drawings.

Comments Relating to Section 1.84(b)

Comment. Three comments were received relating to drawing sheet sizes. One comment favored using only the A4 size and the other two comments favored using letter size (8½ by 11 inches).

Reply. Since applicants have three different size sheets which may be used as they choose, no need is currently seen to make a single size mandatory. The use of letter size drawing sheets requires further study and if acceptable, will be proposed for public comments in the future.

Comments Relating to Section 1.84(i)

Comment. One comment included the suggestion that clarifying language changes be made in § 1.84(i).

Reply. The comment relating to the wording of the last sentence of § 1.84(i) has been adopted.

Comments Relating to Section 1.84(n)

Comment. One comment supported the change to § 1.84(n).

Comments Relating to Section 1.84(p)

Comment. Two comments relating to color drawings in utility applications were received. One comment proposed that the applicant be permitted to file color drawings at his or her choice but that the patent be printed in black and white only with copies of the color drawings being available at extra cost. The other comment related to the patent examiner having the discretion to accept color drawings rather than requiring a petition to be filed.

Reply. In the past only a very few applications have shown a need to include drawings in color. Until more experience is gained, it is considered best to allow color drawings in limited situations and approval to remain in a central location by petition.

Comment. One comment stated that it is not proper to charge a higher fee where color drawings are required.

Reply. Color drawings are considered to be beyond the normal requirements set forth in the rules and therefore require a waiver of the rules for acceptance.

Comments Relating to Section 1.85(a)

Comment. One comment was received suggesting that "may" be changed to "shall" in § 1.85(a).

Reply. The PTO is currently very liberal in accepting informal drawings and no need is seen for making the proposed change.

Comments Relating to Section 1.85(b) and (c)

Comment. One comment proposed allowing drawings filed in the PTO to be withdrawn to make minor changes.

Reply. The problems relating to charging out drawings would remain if drawings are allowed to be removed from the PTO for any reason. A major purpose of the rule change is to remove the necessity to have a drawing charge-out system in the PTO in the future.

Comment. One comment asked whether § 1.85(b) would be construed to deny access to a PTO drawing for making a copy.

Reply. Applicants and their representatives will continue to have access to their files and obtain copies of drawings.

Comment. One comment proposed adding another sentence to § 1.85(c) to clarify that an extension of time is available under § 1.136 for filing of formal drawings but not for payment of the issue fee.

Reply. This proposal has been adopted with somewhat different wording.

Comment. One comment indicated that the three month period for submitting corrections should be measured from the "notice of allowability" rather than the "notice of allowance."

Reply. This proposal has been adopted in the final rule.

Discussion of Specific Rules

Section 1.4, as amended, corrects the listing of rules in paragraph (a)(2).

Section 1.5, as amended, provides that all correspondence related to a U.S. national patent application already filed with the Patent and Trademark Office must include the identification of the application number which comprises both the series code and the serial number assigned to that application by the Patent and Trademark Office (e.g., 07/123,456), or the serial number and filing date. Any correspondence not containing such identification will be returned to the sender where a return address is available. The final rule has been revised to provide that if the correspondence is remailed to the PTO within two weeks of the mailing date of the PTO's cover letter returning the correspondence, the PTO will grant the benefit of the original date of receipt of the returned correspondence. The two-week period will not be extended under § 1.136. Applicants may use either § 1.8 or § 1.10 mailing procedures for resubmissions of returned correspondence. No correspondence

relating to an application should be filed prior to when notification of the application number is received from the PTO. If for some reason returned correspondence is resubmitted later than two weeks after the return mailing by the PTO, the resubmitted correspondence will be accepted but given its date of receipt with proper identification. If the original date of receipt is desired, applicants may petition under § 1.183 for waiver of the rules. Given there are over 30,000 documents to be routed each day, this requirement greatly facilitates the matching of correspondence received with the relevant patent application file. Without proper number identification, documents are either significantly delayed during processing or are never matched with the relevant application file. The amendments to paragraph (b) draw attention to the different requirements for identification in correspondence relating to the payment of maintenance fees.

Section 1.53 (c) and (d), as amended, state that a copy of the "Notice of Incomplete Application" or "Notice to File Missing Part" form sent to the applicant by the Office should accompany any response submitted to the Office in order for the response to be accepted. This will prevent the inadvertent assignment of a new application number to correspondence sent in response to such notices or the misrouting of the correspondence.

Section 1.56(e), as amended, corrects the reference to the "Board of Appeals" to read "Board of Patent Appeals and Interferences."

Section 1.71, as amended, contains new paragraphs (d) and (e) relating to the inclusion of copyright and mask work notices in patent applications. The provisions proposed are similar to those set forth in the Official Gazette notice dated March 20, 1987 titled "Inclusion of Copyright or Mask Work Notice in Patents" appearing on April 21, 1987 at 1077 O.G. 22. Under current intellectual property laws, it is possible to obtain copyright protection or mask work protection as well as patent protection for certain designs and technologies. On occasion, an author or inventor considers it desirable to include a notice of copyright or mask work in a design or utility patent which discloses material on which copyright or mask work protection previously has been established.

The inclusion of a copyright or mask work notice in a patent that discloses material on which copyright or mask work protection previously has been established, will serve to publicize and thereby protect the various intellectual

property rights of the author or inventor. Further, this publication would tend to protect the public by militating against an unintentional encroachment of the rights. The presence of an unrestricted copyright or mask work notice in a patent could have an inhibiting effect on public dissemination of the patent disclosure to the extent it discourages the facsimile reproduction of the patent. The possible effect would be contrary to the mission of the Patent and Trademark Office to disseminate knowledge and information publicly by way of patent issuance, publication, and distribution. To avoid this effect, it is considered necessary to include an appropriate authorization by the author or inventor for copying of the patent itself with any copyright or mask work notice appearing in the patent. Inclusion of a copyright or mask work notice after a Notice of Allowance has been mailed will be permitted only if the criteria of 37 CFR 1.312 have been fulfilled. If the authorization required by amended § 1.71(e) is not included, the notice will be objected to as improper by the examiner. If the examiner maintains the objection upon reconsideration, further review must be by way of a petition filed in accordance with 37 CFR 1.181.

Section 1.81, as amended, clarifies that high quality copies of drawings should be submitted in patent applications. Since corrections are the responsibility of the applicant, the original drawing(s) should be retained by the applicant for future correction, if necessary.

Section 1.84(a), as amended, eliminates reference to two-ply or three-ply bristol board. Amended paragraph (a) also adds a reference to § 1.84(p) relating to color drawings in utility patent applications.

Only one copy of the drawing is required or desired. The Office had attempted to encourage the submission of three copies, but compliance was very low. It was determined that it is more efficient for the Office to rely on consistency and only one copy. Accordingly, hereafter only one copy of the drawings should be submitted.

The Patent and Trademark Office will no longer release to applicants, bonded drafting companies, or others, drawings from patent applications filed after the effective date of these rule changes. See amended § 1.85(b). If corrections to the drawings are necessary, new corrected drawings must be prepared by the applicant and filed in the Patent and Trademark Office. Therefore, the applicant, attorney or agent should retain the original drawing so that a corrected original drawing or corrected

copy may be later submitted if necessary.

The Office will continue to allow applicants to borrow drawings for correction which have been filed prior to the effective date of these rule changes.

Section 1.84(b), as amended, provides for applicants using drawing sheets which are 8½ by 13 inches in size.

Section 1.84(i), as amended, contains grammatical corrections in the text of the rules and clarifies Office drawing requirements as to exploded views, enlarged views and views which require several sheets.

Section 1.84(j), as amended, clarifies how views should be arranged when they are placed sideways on the drawing sheet.

Section 1.84(l), as amended, indicates that drawings may be identified by lightly writing identifying information in the top margin on the drawings. For identification by application number, the Office prefers that the information be placed on the front of the drawing. When the applicant forwards drawings separate from the original application papers, a cover letter identifying the application by application number should accompany the drawings. The application number should also be placed on drawings filed after the application number has been indicated in correspondence to the applicant, in accordance with § 1.84(l).

Section 1.84(n) is added and permits numbering of the drawing sheets. However, such numbering would not appear on the drawings of the printed patent.

Section 1.84(o) is added and provides for the indication of copyright or mask work protection notice on patent application drawings. This procedure is the same as that established by the Official Gazette notice dated March 20, 1987 published on April 21, 1987 at 1077 O.G. 22.

Section 1.84(p) is added and provides in the rules for the filing of color drawings in a very limited number of utility patent applications. An Official Gazette notice relating to this topic dated August 6, 1986, titled "Use of Color Drawings in Utility Patents" was published on September 15, 1987 at 1082 O.G. 25. In light of the substantial administrative and economic burden associated with printing a utility patent with color drawings, the letters patent and the patent copies which are printed at the issuance of the patent will be only in black and white. However, copies of the patent with the color drawings may be purchased separately from the Patent and Trademark Office upon special request and payment of the fee.

It is anticipated that color drawings will only be permitted when color drawings are the only practical method in a utility patent application in which to disclose the subject matter sought to be patented. In order to avoid issues of lack of description or enablement under 35 U.S.C. 112 or new matter under 35 U.S.C. 132, applicants are advised to file the desired color drawings as part of the original application papers. The petition should be directed to the attention of the Deputy Assistant Commissioner for Patents.

Section 1.85, as amended, indicates that drawings not complying with § 1.84 will be accepted in some instances for purposes of examination and that drawings which do comply with all the rules relating to drawings will be required later, and that no corrections will be permitted to drawings filed in the Patent and Trademark Office after the effective date of the rule change.

When corrected drawings are required to be submitted at the time of allowance, the applicant is required to submit *acceptable* drawings within three months from the mailing of the "Notice of Allowability." Within that three-month period, two weeks should be allowed for review of the drawings by the Drafting Branch. If the Office finds that further correction is necessary, the applicant must submit a new corrected drawing to the Office within the original three-month period to avoid the necessity of obtaining an extension of time and paying the extension fee. Therefore, the applicant should file corrected drawings as soon as possible following the receipt of the Notice of Allowability.

Section 85(b) provides that the Patent and Trademark Office will not release drawings filed in applications having a filing date after January 1, 1989 for purposes of correction. Also, in order to give sufficient notice to applicants, allow most patent applications currently on file to be processed, and set a time at which the PTO need no longer provide a system for borrowing of any drawings, § 1.85(b) provides that after January 1, 1991 no drawings may be borrowed from the PTO for the purpose of making drawing corrections.

Section 1.152, as amended, permits broken lines on drawings to show visible environmental structure but not hidden planes and surfaces in design patent application drawings.

Section 1.378, as amended, conforms with section 404 of Public Law 98-622 which states:

(a) Notwithstanding section 41(c) of title 35, United States Code, as in effect before the enactment of Public Law 97-247 (96 Stat. 317), the Commissioner of Patents and Trademarks

may accept after the six-month grace period referred to in such section 41(c), the payment of any maintenance fee due on any patent based on an application filed in the Patent and Trademark Office on or after December 12, 1980, and before August 27, 1982, to the same extent as in the case of patents based on applications filed in the Patent and Trademark Office on or after August 27, 1982.

The amended rule wording includes reference to maintenance fees due on patents based on applications filed in the Patent and Trademark Office on or after December 12, 1980 and before August 27, 1982.

Section 1.421(f), as amended, deletes reference to a canceled PCT Rule and adds reference to the current PCT Rule provisions.

Section 1.480(d), as amended, provides for a refund of a portion of the international preliminary examination fee where the applicant withdraws the demand before the examiner has begun the international preliminary examination. An amount equal to the transmittal fee would be retained by the Patent and Trademark Office to cover the administrative cost involved.

Environmental, Energy, and Other Considerations

The rule change does not have a significant impact on the quality of the human environment or conservation of energy resources.

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Orders 12291 and 12612, and the Paperwork Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354) because the rule change corrects some rules so that they correspond to earlier changes, relate to identification of applications on correspondence, allow greater flexibility in patent drawing content and handling, and provide for a refund where a proper demand for international preliminary examination has been filed but withdrawn later.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than \$100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on

competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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 Executive Order 12612.

The rule change involves collection of information requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and are cleared under OMB Control No. 0651-0011.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Courts, Inventions and patents, Lawyers.

Notice is hereby given that pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6 and 41, the Patent and Trademark Office is amending Title 37 of the Code of Federal Regulations as set forth below.

37 CFR Part 1, is 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 1.4 is amended by revising paragraph (a)(2) to read as follows:

§ 1.4 Nature of correspondence.

(a) * * *

(2) Correspondence in and relating to a particular application or other proceeding in the Office. See particularly the rules relating to the filing, processing, or other proceedings of national applications in Subpart B, §§ 1.31 to 1.378; of international applications in Subpart C, §§ 1.401 to 1.499; of reexamination of patents in Subpart D, §§ 1.501 to 1.570; of interferences in Subpart E, §§ 1.601 to 1.690; of extension of patent term in Subpart F, §§ 1.710 to 1.785; and of trademark applications §§ 2.11 to 2.189.

* * *

3. Section 1.5 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.5 Identification of application, patent or registration.

(a) No correspondence relating to an application should be filed prior to when notification of the application number is

received from the Patent and Trademark Office. When a letter directed to the Patent and Trademark Office concerns a previously filed application for a patent, it must identify on the top page in a conspicuous location, the application number (consisting of the series code and the serial number, e.g., 07/123,456), or the serial number and filing date assigned to that application by the Patent and Trademark Office, or the international application number of the international application. Any correspondence not containing such identification will be returned to the sender where a return address is available. The returned correspondence will be accompanied with a cover letter which will indicate to the sender that if the returned correspondence is resubmitted to the Patent and Trademark Office within two weeks of the mail date on the cover letter, the original date of receipt of the correspondence will be considered by the Patent and Trademark Office as the date of receipt of the correspondence. Applicants may use either the certificate of mailing procedure under § 1.8 or the Express Mail procedure under § 1.10 for resubmissions of returned correspondence if they desire to have the benefit of the date of deposit in the United States Postal Service. If the returned correspondence is not resubmitted within the two-week period, the date of receipt of resubmission will be considered to be the date of receipt of the correspondence. The two-week period to resubmit the returned correspondence will not be extended. If for some reason returned correspondence is resubmitted with proper identification later than two weeks after the return mailing by the Patent and Trademark Office, the resubmitted correspondence will be accepted but given its date of receipt. In addition to the application number, all letters directed to the Patent and Trademark Office concerning applications for patent should also state "PATENT APPLICATION," the name of the applicant, the title of the invention, the date of filing the same, and if known, the group art unit or other unit within the Patent and Trademark Office responsible for considering the letter and the name of the examiner or other person to which it has been assigned.

(b) When the letter concerns a patent other than for purposes of paying a maintenance fee, it should state the number and date of issue of the patent, the name of the patentee, and the title of the invention. For letters concerning

payment of a maintenance fee in a patent, see the provisions of § 1.366(c).

4. Section 1.53 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1.53 Serial number, filing date, and completion of application.

(c) If any application is filed without the specification or drawing required by paragraph (b) of this section, applicant will be so notified and given a time period within which to submit the omitted specification or drawing in order to obtain a filing date as of the date of filing of such submission. A copy of the "Notice of Incomplete Application" form notifying the applicant should accompany any response thereto submitted to the Office. If the omission is not corrected within the time period set, the application will be returned or otherwise disposed of; the fee, if submitted, will be refunded less a \$15.00 handling fee.

(d) If an application which has been accorded a filing date pursuant to paragraph (b) of this section does not include the appropriate filing fee or an oath or declaration by the applicant, applicant will be so notified, if a correspondence address has been provided and given a period of time within which to file the fee, oath, or declaration and to pay the surcharge as set forth in § 1.16(e) in order to prevent abandonment of the application. A copy of the "Notice to File Missing Parts" form mailed to applicant should accompany any response thereto submitted to the Office. If the required filing fee is not timely paid, or if the processing and retention fee set forth in § 1.21(l) is not paid within one year of the date of mailing of the notification required by this paragraph, the application will be disposed of. No copies will be provided or certified by the Office of an application which has been disposed of or in which neither the required basic filing fee nor the processing and retention fee has been paid. The notification pursuant to this paragraph may be made simultaneously with any notification pursuant to paragraph (c) of this section. If no correspondence address is included in the application, applicant has two months from the filing date to file the basic filing fee, oath or declaration and to pay the surcharge as set forth in § 1.16(e) in order to prevent abandonment of the application; or, if no basic filing fee has been paid, one year from the filing date to pay the processing and retention fee set forth in

§ 1.21(l) to prevent disposal of the application.

5. Section 1.56 is amended by revising paragraph (e) to read as follows:

§ 1.56 Duty of disclosure; fraud; striking or rejection of applications.

(e) The examination of an application for compliance with paragraph (d) of this section will normally be delayed until such time as:

(1) All other matters are resolved, or
(2) Appellant's reply brief pursuant to § 1.93(b) has been received and the application is otherwise prepared for consideration by the Board of Patent Appeals and Interferences, at which time the appeal will be suspended for examination pursuant to paragraph (d) of this section.

The prosecution of the application will be reopened to the extent necessary to conduct the examination pursuant to paragraph (d) of this section including any appeal pursuant to § 1.191. If an appeal has already been filed based on a rejection on other grounds, any further rejection under this section shall be treated in accordance with § 1.93(e).

6. Section 1.71 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 1.71 Detailed description and specification of the invention.

(d) A copyright or mask work notice may be placed in a design or utility patent application adjacent to copyright and mask work material contained therein. The notice may appear at any appropriate portion of the patent application disclosure. For notices in drawings, see § 1.84(o). The content of the notice must be limited to only those elements required by law. For example, "©1983 John Doe" (17 U.S.C. 401) and "M* John Doe" (17 U.S.C. 909) would be properly limited and, under current statutes, legally sufficient notices of copyright and mask work, respectively. Inclusion of a copyright or mask work notice will be permitted only if the authorization language set forth in paragraph (e) of this section is included at the beginning (preferably as the first paragraph) of the specification.

(e) The authorization shall read as follows:

A portion of the disclosure of this patent document contains material which is subject to (copyright or mask work) protection. The (copyright or mask work) owner has no objection to the facsimile reproduction by anyone of the patent document or the patent disclosure, as it appears in the Patent and Trademark Office patent file or records, but

otherwise reserves all (copyright or mask work) rights whatsoever.

7. Section 1.81 is amended by revising the title and paragraph (a) to read as follows:

§ 1.81 Drawings required in patent application.

(a) The applicant for a patent is required to furnish a drawing of his or her invention where necessary for the understanding of the subject matter sought to be patented; this drawing, or a high quality copy thereof, must be filed with the application. Since corrections are the responsibility of the applicant, the original drawing(s) should be retained by the applicant for any necessary future correction.

8. Section 1.84 is amended by revising paragraphs (a), (b) introductory text, (i), (j) and (l) redesignating and revising (b)(2) as (b)(3), and by adding new paragraphs (b)(2), (n), (o), and (p), to read as follows:

§ 1.84 Standards for drawings.

(a) *Paper and ink.* Drawings or high quality copies thereof which are submitted to the Office must be made upon paper which is flexible, strong, white, smooth, non-shiny and durable. India ink, or its equivalent in quality, is preferred for pen drawings to secure perfectly black solid lines. The use of white pigment to cover lines is not normally acceptable. See paragraph (p) of this section for use of color drawings in utility patent applications.

(b) *Size of sheet and margins.* The size of the sheets on which drawings are made may be exactly 8½ by 14 inches (21.6 by 35.6 cm.), exactly 8½ by 13 inches (21.6 by 33.1 cm.), or exactly 21.0 by 29.7 cm. (DIN size A4). All drawing sheets in a particular application must be the same size. One of the shorter sides of the sheet is regarded as its top.

(2) On 8½ by 13 inch drawing sheets, the drawing must include a top margin of 1 inch (2.5 cm.) and bottom and side margins of ¼ inch (6.4 mm.) from the edges, thereby leaving a "sight" precisely 8 by 11¼ inches (20.3 by 29.8 cm.). Margin border lines are not permitted. All work must be included within the "sight." The sheets may be provided with two ¼ inch (6.4 mm.) diameter holes having their centerlines spaced 11½ inches (29.2 mm.) below the top edge and 2¼ inches (7.0 cm.) apart, said holes being equally spaced from the respective side edges.

(3) On 21.0 by 29.7 cm. drawing sheets, the drawing must include a top margin of at least 2.5 cm., a left side margin of 2.5 cm., a right side margin of 1.5 cm.,

and a bottom margin of 1.0 cm. Margin border lines are not permitted. All work must be contained within a sight size not to exceed 17 by 26.2 cm.

(i) *Views.* The drawing must contain as many figures as may be necessary to show the invention; the figures should be consecutively numbered if possible in the order in which they appear. The figures may be plan, elevation, section, or perspective views, and detail views of portions or elements, on a larger scale if necessary, may also be used. Exploded view, with the separated parts of the same figure embraced by a bracket, to show the relationship or order of assembly of various parts are permissible. When an exploded view is shown in a figure which is on the same sheet as another figure, the exploded view should be placed in brackets. When necessary, a view of a large machine or device in its entirety may be broken and extended over several sheets if there is no loss in facility of understanding the view. Where figures on two or more sheets form in effect a single complete figure, the figures on the several sheets should be so arranged that the complete figure can be understood by laying the drawing sheets adjacent to one another. The figures, even though on separate sheets, should be labeled as separate figures, for example as Fig. 1a, Fig. 1b, etc., so that it would be apparent that the views actually comprise one figure. The arrangement should be such that no part of any of the figures appearing on the various sheets is concealed and that the complete figure can be understood even though spaces will occur in the complete figure because of the margins on the drawing sheets. The plane upon which a sectional view is taken should be indicated on the general view by a broken line, the ends of which should be designated by numerals corresponding to the figure number of the sectional view and have arrows applied to indicate the direction in which the view is taken. A moved position may be shown by a broken line superimposed upon a suitable figure if this can be done without crowding, otherwise a separate figure must be used for this purpose. Modified forms of construction can only be shown in separate figures. Views should not be connected by projection lines nor should centerlines be used. When a portion of a figure is enlarged for magnification purposes, the figure and the enlarged figure must be labeled as separate figures.

(j) *Arrangement of views.* All views on the same sheet should stand in the same direction and, if possible, stand so

that they can be read with the sheet held in an upright position. If views longer than the width of the sheet are necessary for the clearest illustration of the invention, the sheet may be turned on its side so that the top of the sheet with the appropriate top margin to be used as the heading space is on the right-hand side. One figure must not be placed upon another or within the outline of another.

(l) *Identification of drawings.* Identifying indicia (such as the application number, group art unit, title of the invention, attorney's docket number, inventor's name, number of sheets, etc.) not to exceed 2¼ inches (7.0 cm.) in width may be placed in a centered location between the side edges within three-fourths inch (19.1 mm.) of the top edge. Either this marking technique on the front of the drawing or the placement, although not preferred, of this information and the title of the invention on the back of the drawings is acceptable. Authorized security markings may be placed on the drawings provided they are outside the illustrations and are removed when the material is declassified. Other extraneous matter will not be permitted upon the face of a drawing.

(n) *Numbering of drawing sheets.* The drawing sheets may be numbered in consecutive arabic numbers at the top of the sheets, in the middle, but not in the margin. Such numbering will be deleted for printing purposes since page numbers are added at the time of printing the patent by the Office.

(o) *Copyright of Mask Work Notice.* A copyright or mask work notice may appear in the drawing but must be placed within the "sight" of the drawing immediately below the figure representing the copyright or mask work material and be limited to letters having a print size of ⅛ to ¼ inches (3.2 to 6.4 mm.) high. The content of the notice must be limited to only those elements required by law. For example, "©1983 John Doe" (17 U.S.C. 401) and "M* John Doe" (17 U.S.C. 909) would be properly limited and, under current statutes, legally sufficient notices of copyright and mask work, respectively. Inclusion of a copyright or mask work notice will be permitted only if the authorization language set forth in § 1.71(e) is included at the beginning (preferably as the first paragraph) of the specification.

(p) *Limited use of color drawings in utility patent applications.* Paragraph (a) of this section requires that drawings in utility patent applications must be in

black on white paper. However, on rare occasion, color drawings may be necessary as the only practical medium by which to disclose the subject matter sought to be patented in a utility patent application. The Patent and Trademark Office will accept color drawings in utility patent applications only after granting of a petition by the applicant under § 1.183 of this part which requests waiver of the requirements of paragraph (a) of this section. Any such petition should be directed to the Office of the Deputy Assistant Commissioner for Patents and must include the following:

(1) The appropriate fee set forth in § 1.17(h).

(2) Five (5) sets of color drawings on DIN size A4 (21.0 by 29.7 cm.) sheets.

(3) As proposed amendment to insert in the specification the following language as the first paragraph in the portion of the specification relating to the brief description of the drawing:

The file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee.

9. Section 1.85 is revised to read as follows:

§ 1.85 Corrections to drawings.

(a) The requirements of § 1.84 relating to drawings will be strictly enforced. A drawing not executed in conformity thereto, if suitable for reproduction, may be admitted for examination but in such case a new drawing must be furnished.

(b) The Patent and Trademark Office will not release drawings in applications having a filing date after January 1, 1989, or any drawings from any applications after January 1, 1991, for purposes of correction. If corrections are necessary, new corrected drawings must be submitted within the time set by the Office.

(c) When corrected drawings are required to be submitted at the time of allowance, the applicant is required to submit acceptable drawings within three months from the mailing of the "Notice of Allowability." Within that three-month period, two weeks should be allowed for review of the drawings by the Drafting Branch. If the Office finds that correction is necessary, the applicant must submit a new corrected drawing to the Office within the original three-month period to avoid the necessity of obtaining an extension of time and paying the extension fee. Therefore, the applicant should file corrected drawings as soon as possible following the receipt of the Notice of Allowability. The provisions with respect to obtaining an extension of time relates only to the late filing of corrected

drawings. The time limit for payment of the issue fee is a fixed three-month period which cannot be extended as set forth in 35 U.S.C. 151.

10. Section 1.152 is revised to read as follows:

§ 1.152 Drawing.

The design must be represented by a drawing made in conformity with the rules laid down for drawings of mechanical inventions and must contain a sufficient number of views to constitute a complete disclosure of the appearance of the article. Appropriate surface shading must be used to show the character or contour of the surfaces represented. Broken lines may be used to show visible environmental structure, but may not be used to show hidden planes and surfaces which cannot be seen through opaque materials.

11. Section 1.378 is amended by revising paragraphs (b)(1) and (c)(1) to read as follows:

§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent.

(b) * * *

(1) The required maintenance fee set forth in § 1.20 (e) through (j),

(c) * * *

(1) The required maintenance fee set forth in § 1.20 (e) through (j),

12. Section 1.421 is amended by revising paragraph (f) and adding a new paragraph (g) to read as follows:

§ 1.421 Applicant for international application.

(f) Changes in the person, name, or address of the applicant of an international application shall be made in accordance with PCT Rule 92bis.

(g) The wording of PCT Rule 92bis is as follows:

PCT Rule 92bis—Recording of Changes in Certain Indications in the Request or the Demand

92bis Recording of Changes by the International Bureau

(a) The International Bureau shall, on the request of the applicant or the receiving Office, record changes in the following indications appearing in the request or demand:

(i) person name, residence, nationality or address of the applicant,

(ii) person, name or address of the agent, the common representative or the inventor.

(b) The International Bureau shall not record the requested change if the request for recording is received by it after the expiration:

(i) Of the time limit referred to in Article 22(1), where Article 39(1) is not applicable with respect to any Contracting State;

(ii) Of the time limit referred to in Article 39(1)(a), where Article 39(1) is applicable with respect to at least one Contracting State.

13. Section 1.480 is amended by revising paragraph (d) to read as follows:

§ 1.480 Demand for international preliminary examination.

(d) Withdrawal of a proper Demand prior to the start of the international preliminary examination will entitle applicant to a refund of the preliminary examination fee minus the amount of the transmittal fee set forth in § 1.445(a)(1).

Date: November 21, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88-27248 Filed 11-25-88; 8:45am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8E3670/R995; FRL-3482-4]

Menthol; Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the pesticide chemical menthol in or on beeswax and honey. This rule, which eliminates the need to establish a maximum permissible level for residues of menthol in or on the commodities, was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: November 28, 1988.

ADDRESS: Written objections, identified by the document control number [PP 8E3670/R995], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716,