

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 2002–NM–233–AD.

Applicability: Model Falcon 2000 series airplanes on which Dassault Modification M2111 has not been installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leakage into a “hot” section of the engine, and consequent propagation of an uncontained engine fire, accomplish the following:

Modification of the Engine Pylons

(a) Within 7 months after the effective date of this AD, modify the forward ribs of the left and right engine pylons by plugging the two 4-millimeter holes in each rib in accordance with the Accomplishment Instructions of Dassault Service Bulletin F2000–248, dated August 12, 2002. Although the service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–413(B), dated August 7, 2002.

Issued in Renton, Washington, on November 28, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 2003–P–029]

RIN 0651–AB71

Revision of Patent Term Extension and Patent Term Adjustment Provisions Related to Decisions by the Board of Patent Appeals and Interferences

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rule making.

SUMMARY: The patent term extension provisions of the Uruguay Round Agreements Act (URAA) and the patent term adjustment provisions of the American Inventors Protection Act of 1999 (AIPA) each provide for the possibility of patent term extension or adjustment if the issuance of the patent was delayed due to review by the Board of Patent Appeals and Interferences (BPAI) or by a Federal court and the patent was issued pursuant to or under a decision in the review reversing an adverse determination of patentability. The United States Patent and Trademark Office (Office) is proposing to revise the rules of practice in patent cases to indicate that under certain circumstances a remand by the Board of Patent Appeals and Interferences shall be considered a decision in the review reversing an adverse determination of patentability for purposes of patent term extension or patent term adjustment.

DATES: *Comment deadline date:* To be ensured of consideration, written comments must be received on or before January 5, 2004. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to *AB71.Comments@uspto.gov*. Comments may also be submitted by mail addressed to: Box Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or by facsimile to (703) 746–3261, marked to the attention of Kery A. Fries. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office prefers that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Crystal Park 2, Suite 910, 2121 Crystal Drive, Arlington, Virginia, and will be

available through anonymous file transfer protocol (ftp) via the Internet (address: *http://www.uspto.gov*). Since 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 in the comments.

FOR FURTHER INFORMATION CONTACT: Kery A. Fries, Legal Advisor, Office of Patent Legal Administration, by telephone at (703) 305–1383, by mail addressed to: Box Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or by facsimile to (703) 746–3240, marked to the attention of Kery A. Fries.

SUPPLEMENTARY INFORMATION: Section 532(a) of the URAA (Pub. L. 103–465, 108 Stat. 4809 (1994)) amended 35 U.S.C. 154 to provide that the term of a patent ends on the date that is twenty years from the filing date of the application, or the earliest filing date for which a benefit is claimed under 35 U.S.C. 120, 121, or 365(c). Public Law 103–465 also contained provisions, codified at 35 U.S.C. 154(b), for patent term extension due to certain examination delays. The Office implemented the patent term extension provisions of the URAA in a final rule published in April of 1995. *See Changes to Implement 20-Year Patent Term and Provisional Applications*, 60 FR 20195 (Apr. 25, 1995), 1174 *Off. Gaz. Pat. Office* 15 (May 2, 1995) (final rule).

The AIPA further amended 35 U.S.C. 154(b) to include additional bases for patent term extension (termed “patent term adjustment” in the AIPA). Original utility and plant patents issuing from applications filed on or after May 29, 2000, may be eligible for patent term adjustment if issuance of the patent is delayed due to one or more of the enumerated administrative delays listed in 35 U.S.C. 154(b)(1). The Office implemented the patent term adjustment provisions of the AIPA in a final rule published in September of 2000. *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term*, 65 FR 56365 (Sept. 18, 2000), 1239 *Off. Gaz. Pat. Office* 14 (Oct. 3, 2000) (final rule). The patent term adjustment provisions of the AIPA apply to original (*i.e.*, non-reissue) utility and plant applications filed on or after May 29, 2000. *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term*, 65 FR at 56367, 1239 *Off. Gaz. Pat. Office* at 14–15. The patent term extension provisions of the URAA (for delays due to secrecy order, interference or successful appellate review) continued to apply to utility and plant applications

filed on or after June 7, 1995, and before May 29, 2000. *See id.*

The Office is proposing to amend the rules of practice in patent cases to indicate that certain remands by the BPAI shall be considered "a decision in the review reversing an adverse determination of patentability" for patent term adjustment and patent term extension purposes. Specifically, if an application is remanded by a panel of the BPAI, and a notice of allowance under § 1.311 is mailed without further review by the BPAI, without further amendment of the application, and without other action by the applicant, the remand shall (if the proposed change is adopted) be considered a decision reversing an adverse determination of patentability for patent term adjustment and patent term extension purposes. The phrase "remanded by a panel" of the BPAI means that the application was remanded by a panel comprised of members of the BPAI as defined in 35 U.S.C. 6. The phrase "remanded by a panel" of the BPAI does not pertain to applications containing a remand or order returning an appeal to the examiner issued by a BPAI administrator. *See Revised Docketing Procedures for Appeals Arriving at the Board of Patent Appeals and Interferences*, 1260 *Off. Gaz. Pat. Office* 18 (July 2, 2002).

The Office initially took the position that a remand by a BPAI panel was not a "decision" within the meaning of 35 U.S.C. 154(b)(1)(A)(iii), much less "a decision reversing an adverse determination of patentability" as that phrase is used in 35 U.S.C. 154(b)(1)(C)(iii). *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term*, 65 FR at 56369, 1239 *Off. Gaz. Pat. Office* at 16. The Office has subsequently determined that there are a number of BPAI panel remands that convey the weakness in the examiner's adverse patentability determination in a manner tantamount to a decision reversing the adverse patentability determination. Such a BPAI panel remand generally results in the examiner *sua sponte* deciding to withdraw the rejections and allow the application without any intervening action by the applicant, rather than responding to the issues raised in the remand and returning the application to the BPAI for decisions reversing the adverse patentability determinations. The change being proposed in this notice addresses the situation in which an examiner responds to a remand by a BPAI panel by *sua sponte* withdrawing all the rejections and allowing the application,

rather than responding to the issues raised in the remand and returning the application to the BPAI for a decision on the appeal. In this situation, the BPAI panel remand shall (if the proposed change is adopted) be considered "a decision in the review reversing an adverse determination of patentability" for patent term extension and patent term adjustment purposes. If, however, the application is allowed as a result of a further amendment, or after any other action by the applicant (*e.g.*, the filing of a paper containing argument, an affidavit or declaration, or an information disclosure statement), without being returned to the BPAI for further review, then such remand shall not be considered "a decision in the review reversing an adverse determination of patentability" for patent term extension and patent term adjustment purposes.

If the patent issues after a remand that is considered "a decision in the review reversing an adverse determination of patentability," the BPAI panel remand is the "final decision in favor of the applicant" for purposes of a patent term extension or adjustment calculation under § 1.701(c)(3) or § 1.703(e) (as applicable). The period of extension or adjustment calculated under § 1.701(c)(3) or § 1.703(e) (as applicable) would equal the number of days in the period beginning on the date on which a notice of appeal to the BPAI was filed under 35 U.S.C. 134 and § 1.191 and ending on the mailing date of the BPAI panel remand.

Discussion of Specific Rules

Section 1.701: Section 1.701(a)(3) is proposed to be amended by adding the following sentence: If an application is remanded by a panel of the Board of Patent Appeals and Interferences, and a notice of allowance under § 1.311 is mailed without further review by the Board of Patent Appeals and Interferences, without further amendment of the application, and without other action by the applicant, the remand shall be considered a decision reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(2) as amended by section 532(a) of the Uruguay Round Agreements Act, Public Law 103-465, 108 Stat. 4809, 4983-85 (1994). Section 1.701(a)(3) is also proposed to be amended to change "decision reversing an adverse determination of patentability" to "decision in the review reversing an adverse determination of patentability" for consistency with 35 U.S.C. 154(b)(2) as amended by section 532(a) of the URAA.

Section 1.702: Section 1.702(e) is proposed to be amended by adding the following sentence: If an application is remanded by a panel of the Board of Patent Appeals and Interferences, and a notice of allowance under § 1.311 is mailed without further review by the Board of Patent Appeals and Interferences, without further amendment of the application, and without other action by the applicant, the remand shall be considered a decision by the Board of Patent Appeals and Interferences as that phrase is used in 35 U.S.C. 154(b)(1)(A)(iii) and a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(1)(C)(iii). Section 1.702(e) is also proposed to be amended to change "decision reversing an adverse determination of patentability" to "decision in the review reversing an adverse determination of patentability" for consistency with 35 U.S.C. 154(b)(1)(C)(iii).

Rule Making Considerations

Regulatory Flexibility Act: The Deputy General Counsel for General Law, United States Patent and Trademark Office, has certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes proposed in this notice (if adopted) would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The provisions of the Regulatory Flexibility Act relating to the preparation of a flexibility analysis are not applicable to this rule making because the changes proposed in this notice will not have a significant economic impact on a substantial number of small entities. The changes proposed in this notice would (if adopted) only change the manner in which the Office makes its patent term adjustment determination in applications that have been allowed under certain circumstances following a remand by the BPAI. The changes proposed in this notice would impose no additional fees or requirements on patent applicants.

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

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

Paperwork Reduction Act: This notice involves information collection requirements which are subject to

review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this notice has been reviewed and previously approved by OMB under OMB control number 0651-0020. The United States Patent and Trademark Office is not resubmitting an information collection package to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with the information collection under OMB control number 0651-0020.

The title, description and respondent description of this information collection is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The changes in this notice merely set forth the circumstances under which the Office will consider a remand by the Board of Patent Appeals and Interferences to be a decision in the review reversing an adverse determination of patentability for purposes of patent term extension and patent term adjustment.

OMB Number: 0651-0020.

Title: Patent Term Extension.

Form Numbers: None.

Type of Review: Approved through October of 2004.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions, Farms, Federal Government and State, Local and Tribal Governments.

Estimated Number of Respondents: 26,858.

Estimated Time Per Response: Between 1 and 25 hours.

Estimated Total Annual Burden Hours: 30,903 hours.

Needs and Uses: The information supplied to the United States Patent and Trademark Office by an applicant requesting reconsideration of a patent term adjustment determination under 35 U.S.C. 154(b) (§ 1.702 *et seq.*) is used by the United States Patent and Trademark Office to determine whether its determination of patent term adjustment under 35 U.S.C. 154(b) is correct, and whether the applicant is entitled to reinstatement of reduced patent term adjustment. The information supplied to the United States Patent and Trademark Office by an applicant seeking a patent term extension under 35 U.S.C. 156 (§ 1.710 *et seq.*) is used by the United States Patent and Trademark Office, the

Department of Health and Human Services, and the Department of Agriculture to determine the eligibility of a patent for extension and to determine the period of any such extension. The applicant can apply for patent term and interim extensions, petition the Office to review final eligibility decisions, withdraw patent term applications, and declare his or her eligibility to apply for a patent term extension.

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

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

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

For the reasons set forth in the preamble, 37 CFR Part 1 is proposed to be 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. 2(b)(2).

2. Section 1.701 is amended by revising paragraph (a)(3) to read as follows:

§ 1.701 Extension of patent term due to examination delay under the Uruguay Round Agreements Act (original applications, other than designs, filed on or after June 8, 1995, and before May 29, 2000).

(a) * * *

(3) Appellate review by the Board of Patent Appeals and Interferences or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability and if the patent is not subject to a terminal disclaimer due to the issuance of another patent claiming subject matter that is not patentably distinct from that under appellate review. If an application is remanded by a panel of the Board of Patent Appeals and Interferences, and a notice of allowance under § 1.311 is mailed without further review by the Board of Patent Appeals and Interferences, without further amendment of the application, and without other action by the applicant, the remand shall be considered a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(2) as amended by section 532(a) of the Uruguay Round Agreements Act, Public Law 103-465, 108 Stat. 4809, 4983-85 (1994).

* * * * *

3. Section 1.702 is amended by revising paragraph (e) to read as follows:

§ 1.702 Grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

* * * * *

(e) *Delays caused by successful appellate review.* Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to review by the Board of Patent Appeals and Interferences under 35 U.S.C. 134 or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued under a decision in the review reversing an adverse determination of patentability. If an application is remanded by a panel of the Board of Patent Appeals and Interferences, and a notice of allowance under § 1.311 is mailed without further review by the Board of Patent Appeals and Interferences, without further amendment of the application, and without other action by the applicant, the remand shall be considered a decision by the Board of Patent Appeals and Interferences as that phrase is used in 35 U.S.C. 154(b)(1)(A)(iii) and a decision in the review reversing an

