

Notice Advising Patent and Trademark Applicants and Owners That Friday, January, 19, 2001 is Not a Legal Holiday for Purposes of 35 U.S.C. § 21

This notice advises patent and trademark applicants and owners that Friday, January 19, 2001 is not a legal public holiday for purposes of 35 U.S.C. § 21. **Therefore, patent and trademark applicants and owners are advised that if the time for taking any action in a patent or trademark matter falls on Friday, January 19, 2001, the applicants and owners must take the required action on or before that date in order to avoid a possible loss of rights.**

This issue arises because Inauguration Day for President-elect Bush will be held on Saturday, January 20, 2001. Thus, applicants and owners may believe, albeit incorrectly, that Friday, January 19, 2001 is a federal holiday which would enable them to extend the date "for taking any action or paying any fee," as provided for under 35 U.S.C. § 21, to Monday, January 22, 2001. This conclusion would be an incorrect interpretation of the statute. See To the Chairman, United States Civil Service Commission, 51 Com. Gen. 586, 587 (Mar. 20, 1972).

The language in the Manual of Patent Examining Procedure (MPEP) Section 710.05 and Trademark Manual of Examining Procedure (TMPEP) Section 1109.02 may be confusing because they both provide that Inauguration Day constitutes a "Federal holiday," and that when a Federal holiday falls on a Saturday, the preceding day, Friday, is considered to be a Federal holiday. While this is true for legal public holidays listed in 5 U.S.C. § 6103, it is not true for Inauguration Day (see 5 U.S.C. § 6103(C)). Consequently, interested parties are advised that Friday, January 19, 2001 does not constitute a legal holiday for purposes of 35 U.S.C. § 21.

Applicants and owners who fail to take any required action by Friday, January 19, 2001, but, instead, take such action on Monday, January 22, 2001, will not be permitted to rely upon the language set forth in the above-quoted provisions of the MPEP or the TMPEP as a basis for asserting that their actions are timely. Neither the MPEP nor the TMPEP have the force and effect of law. See generally West Fla. Seafood, Inc. v. Jet Restaurants, Inc., 31 F.3d 1122, 1127 n. 8, 31 U.S.P.Q.2D (BNA) 1660, 1664 n. 8 (Fed. Cir. 1994) (TMPEP).