

Subject: NPRM Comment re: proposed amendment to Section 1.52

Sirs:

The following views are my own.

In order to specify the equivalent of a paper size sheet for applications filed as electronic media, the proposed rule makes certain assumptions that are based solely on ASCII text content. The PTO's current EFS-ABX software involves a Microsoft Word template and PDF writer. These add electronic formatting information to the base text content, which increases the file size for an average Specification sheet. More importantly, the assumptions presented in the rulemaking completely neglect to take into account the very much larger electronic file sizes for TIFF-format drawing sheets. Since the rulemaking is supposed to implement 35 U.S.C. 41(a)(1)(G), which includes the total number of both Specification and Drawing sheets in the fee calculation, the 2 kilobyte size is way too small to account for the presence of drawings in the submitted electronic application package.

For example, the number of drawing sheets in patent applications varies, but might typically range from 10 to 25% of the total number of application paper sheets. Likewise, the file size for a drawing sheet varies according to the complexity of the figures being illustrated, but might typically range anywhere from 20 kilobytes for the very simplest drawing sheets to perhaps as much as 300 or 400 kilobytes for more complex drawing sheets. My guess is that the equivalent per-sheet file size for a electronic file that combines both text and drawings would average at least 20 to 30 kilobytes per sheet.

To get a reliable estimate of the electronic media equivalent for an average sheet size, the PTO should either, separate the Specification and Drawing calculations; or, if this is not possible or too cumbersome, conduct a brief survey of recently filed actual electronic applications involving the PTO's current EFS-ABX software in terms of total number of sheets and total electronic file sizes, ideally using electronic applications near the 100 sheet threshold, so that a more accurate equivalent could be obtained that properly takes drawing sheets into account. Or for fee calculation purposes, the submitted electronic application can be opened by the PTO upon receipt and the actual number of PDF sheets determined exactly, without reference to the electronic file size.

At the very least, the equivalent size presented in the rulemaking, which takes only Specification text content into account, is far too small and needs to be increased at least tenfold to account for drawings. The very crude estimation set forth in the rulemaking should not be adopted without correction. To use a low-balled estimate like that proposed in the rulemaking would discourage electronic filing of large applications, since paper filing would then be truly less expensive to the applicant.

Sincerely,

Mark Protsik, Patent Agent