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[3510-16]

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO-T-2016-0002]

RIN 0651-AD07

**Changes in Requirements for Affidavits or Declarations of Use, Continued Use, or
Excusable Nonuse in Trademark Cases**

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: In order to assess and promote the accuracy and integrity of the trademark register, the United States Patent and Trademark Office (USPTO or Office) proposes to amend its rules concerning the examination of affidavits or declarations of continued use or excusable nonuse filed pursuant to section 8 of the Trademark Act, or affidavits or declarations of use in commerce or excusable nonuse filed pursuant to section 71 of the Trademark Act. Specifically, the USPTO proposes to require the submission of information, exhibits, affidavits or declarations, and such additional specimens of use as may be reasonably necessary for the USPTO to ensure that the register accurately reflects marks that are in use in the United States for all the goods/services identified in the

registrations, unless excusable nonuse is claimed in whole or in part. A register that does not accurately reflect marks in use in the United States for the goods/services identified in registrations imposes costs and burdens on the public. The proposed rules will allow the USPTO to require additional proof of use to verify the accuracy of claims that a trademark is in use in connection with particular goods/services identified in the registration.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] to ensure consideration.

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 the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, attention Jennifer Chicoski; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, VA, 22314, attention Jennifer Chicoski; or by electronic mail message via the Federal eRulemaking Portal at <http://www.regulations.gov>. See the Federal eRulemaking Portal Web site for additional instructions on providing comments via the Federal eRulemaking Portal. All comments submitted directly to the USPTO or provided on the Federal eRulemaking Portal should include the docket number (PTO-T-2016-0002).

The comments will be available for public inspection on the USPTO's Web site at <http://www.uspto.gov>, on the Federal eRulemaking Portal, and at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street,

Alexandria, VA 22314. 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: Jennifer Chicoski, Office of the Deputy Commissioner for Trademark Examination Policy, by e-mail at TMPolicy@uspto.gov, or by telephone at (571) 272-8943.

SUPPLEMENTARY INFORMATION

Purpose: The USPTO proposes to revise the rules in parts 2 and 7 of title 37 of the Code of Federal Regulations to allow the USPTO, during the examination of affidavits or declarations of continued use or excusable nonuse filed pursuant to section 8 of the Trademark Act, 15 U.S.C. 1058, or affidavits or declarations of use in commerce or excusable nonuse filed pursuant to section 71 of the Trademark Act, 15 U.S.C. 1141k (section 8 or section 71 affidavits), to require the submission of such information, exhibits, affidavits or declarations, and such additional specimens of use as may be reasonably necessary for the USPTO to verify the accuracy of claims that a trademark is in use in connection with the goods/services listed in the registration.

This will benefit the public by facilitating the USPTO's ability to assess and promote the integrity of the trademark register by encouraging accuracy in the identification of goods/services for which use or continued use is claimed. The accuracy of the trademark register as a reflection of marks that are actually in use in the United States for the goods/services identified in the registrations listed therein serves an

important purpose for the public. The public relies on the register to determine whether a chosen mark is available for use or registration. Where a party's search of the register discloses a potentially confusingly similar mark, that party may incur a variety of resulting costs and burdens, such as those associated with investigating the actual use of the disclosed mark to assess any conflict, proceedings to cancel the registration or oppose the application of the disclosed mark, civil litigation to resolve a dispute over the mark, or changing plans to avoid use of the party's chosen mark. If a registered mark is not actually in use in the United States, or is not in use in connection with all the goods/services identified in the registration, these costs and burdens may be incurred unnecessarily. An accurate and reliable trademark register helps avoid such needless costs and burdens.

The proposed rules also facilitate the cancellation of registrations for marks that were never in use or are no longer in use, and for which acceptable claims of excusable nonuse were not submitted, in connection with the identified goods/services. The statutory requirements in sections 8 and 71 exist to enable the USPTO to clear the register of deadwood by cancelling, in whole or in part, registrations for marks that are not in use for all or some of the goods/services identified in the registration. The proposed rules further this statutory purpose.

Background

Post Registration Proof-of-Use Pilot Program: A final rule was published in the Federal Register on May 22, 2012 (77 FR 30197), in which the USPTO announced a two-year pilot program to assess and promote the accuracy and integrity of the trademark register. The USPTO randomly selected 500 registrations for which section 8 and section

71 affidavits were filed to participate in the pilot program to determine the actual use of the marks in connection with the goods/services identified in the registrations. The selected registrations comprised a sample of the four statutory registration bases, that is, Trademark Act sections 1(a), 44(e), 66(a), and 1(a) and 44(e) combined (dual basis). 15 U.S.C. 1051(a), 1126(e), 1141(e). In each case, the trademark owner had submitted, as part of its section 8 or section 71 affidavit, a sworn statement that all the goods/services identified in the registration or otherwise set forth in the filing were presently in use in commerce. None of the selected registrations included claims of excusable nonuse.

As part of the pilot program, the selected trademark owners were required to submit proof of use of their marks for two additional goods/services per class, in addition to the one specimen per class submitted with their affidavits, and to verify use of the additional goods/services during the statutory filing period. The USPTO randomly selected the two specific goods/services for which additional proof of use was required. If the owner's response to the inquiry did not fully address the requirements, or included a request to delete the identified goods/services, the USPTO required further proof of use to verify the accuracy of the goods/services identified in the registration. If the registration owner responded by providing acceptable proof of use and satisfying any other outstanding requirements as to the underlying maintenance filing, a notice of acceptance was issued. The pilot concluded with all 500 registrations receiving either a notice of acceptance of the affidavit or declaration or a notice of cancellation of the registration.

Summary of Results: In 51% of the 500 registrations selected for the pilot, the trademark owners failed to supply additional verified proof of use on specific

goods/services for which use was initially claimed. Of this 51%, in 35% of the registrations, the owner requested that some goods/services that were initially claimed to be in use be deleted, and the remaining 16% of the registrations were cancelled because the trademark owners failed to respond to the requirements for additional proof or to any other issues raised during examination of the section 8 or section 71 affidavit.

Ultimately, the section 8 and section 71 affidavits were accepted for 84.4%, or 422 registrations, which included acceptances issued after goods/services queried under the pilot were deleted.

Identifying Procedures to Assess and Promote the Accuracy and Integrity of the Trademark Register: The status reports issued throughout the course of the pilot all supported the need for ongoing efforts aimed at ensuring the accuracy and integrity of the trademark register as to the actual use of marks in connection with the goods/services identified in the registrations. To that end, the USPTO held a roundtable discussion on December 12, 2014 for various stakeholder groups, requested written comments from interested parties to further explore the topic, and discussed the topic at several other outreach sessions. During the roundtable discussion and outreach sessions, one suggestion that received widespread support was to establish a permanent program similar to the proof-of-use pilot.

The USPTO proposes herein a permanent program where it would conduct random audits of up to 10% of the combined total of section 8 and section 71 affidavits filed each year in which the mark is registered for more than one good or service per class. As part of the review of the selected affidavits, in addition to the one specimen of use per class currently required, owners would be required to provide additional proof of

use in the nature of information, exhibits, affidavits or declarations, and specimens showing use for some of the additional goods/services listed beyond that shown in the one specimen per class.

The USPTO anticipates issuing an Office action that would specify the goods/services that will require the submission of the additional information, exhibits, affidavits or declarations, and specimens. The trademark owners would be afforded the usual response period to the Office action, that is, a response would be due within six months of the issuance date of the Office action, or before the end of the statutory filing period for the section 8 or section 71 affidavit, whichever is later. 37 CFR 2.163(b), 7.39(a). If the trademark owner responds, but is ultimately unable to provide the requested information, exhibits, affidavits or declarations, and specimens, the USPTO would deem the section 8 or section 71 affidavit unacceptable as to the goods/services to which the requirement pertained and will cancel such goods/services from the registration. If no response to the Office action is filed within six months of the issuance date of the Office action, or before the end of the statutory filing period for the section 8 or section 71 affidavit, whichever is later, the USPTO would cancel the entire registration, unless time remains in the grace period under section 8(a)(3) or section 71(a)(3) of the Act. 15 U.S.C. 1058(a)(3), 1141k(a)(3); 37 CFR 2.163(c), 7.39(b). If time remains in the grace period, the owner may file a complete new section 8 or section 71 affidavit, with a new fee and grace-period surcharge. 37 CFR 2.161(d)(2), 7.36(b)(3).

The purpose of the program is to substantiate claims of use and discourage inaccuracies within these maintenance filings and continued registration of marks that are

no longer in use for the listed goods/services. In Fiscal Year 2015, approximately 147,496 section 8 and 5,000 section 71 affidavits were filed.

Discussion of Proposed Regulatory Changes

The USPTO proposes to amend 37 CFR 2.161 and 7.37 to provide that the USPTO may require such information, exhibits, affidavits or declarations, and such additional specimens of use as may be reasonably necessary for the USPTO to assess and promote the accuracy and integrity of the register. The current rules mandate the submission of only one specimen per class in connection with a section 8 or section 71 affidavit unless additional information, exhibits, affidavits or declarations, or specimens are necessary for proper examination of the affidavit itself. 37 CFR 2.161(g) and (h), 7.37(g) and (h). This revision will allow the USPTO to require additional proof of use of a mark not only to facilitate proper examination of a section 8 or section 71 affidavit, but also to verify the accuracy of claims that a trademark is in use on or in connection with the goods/services identified in the registration

The USPTO proposes to revise § 2.161(h) to add the phrase “or for the Office to assess and promote the accuracy and integrity of the register” at the end of the paragraph.

The USPTO proposes to revise § 7.37(h) to add the phrase “or for the Office to assess and promote the accuracy and integrity of the register” at the end of the paragraph.

Rulemaking Requirements

Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. See Perez v. Mortg. Bankers Ass’n, 135 S. Ct. 1199, 1204 (2015) (interpretive rules “advise the public of the agency’s construction of the statutes and rules which it administers”) (citation and internal

quotation marks omitted); Nat'l Org. of Veterans' Advocates v. Sec'y of Veterans Affairs, 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive); Bachow Commc'ns Inc. v. FCC, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); Inova Alexandria Hosp. v. Shalala, 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. See Perez, 135 S. Ct. at 1206 (notice-and-comment procedures are required neither when an agency “issue[s] an initial interpretive rule” nor “when it amends or repeals that interpretive rule”); Cooper Techs. Co. v. Dudas, 536 F.3d 1330, 1336-37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice,” quoting 5 U.S.C. 553(b)(A)). However, the USPTO has chosen to seek public comment before implementing the rule.

Initial Regulatory Flexibility Analysis:

The USPTO publishes this Initial Regulatory Flexibility Analysis (IRFA) as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) to examine the impact of the Office's proposed changes to the requirements for section 8 and section 71 affidavits on small entities and to seek the public's views. Under the RFA, whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish a notice of proposed rulemaking (NPRM), the agency must prepare and make available for public comment an

IRFA, unless the agency certifies under 5 U.S.C. 605(b) that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605.

Items 1–5 below discuss the five items specified in 5 U.S.C. 603(b)(1) through (5) to be addressed in an IRFA. Item 6 below discusses alternatives to this proposal that the Office considered.

1. Description of the reasons that action by the Office is being considered:

The USPTO proposes to require any information, exhibits, affidavits or declarations, and such additional specimens deemed reasonably necessary to assess and promote the accuracy and integrity of the trademark register in connection with the examination of a section 8 or section 71 affidavit. Post registration affidavits under section 8 or section 71, and their accompanying specimens of use, demonstrate a registration owner’s continued use of its mark in commerce for the goods/services identified in the registration. The proposed revisions will facilitate the USPTO’s ability to ensure that the register accurately reflects marks that are in use in commerce that may be regulated by the U.S. Congress for the goods/services identified therein.

2. Succinct statement of the objectives of, and legal basis for, the proposed rules:

The objective of the proposed rulemaking is to allow the USPTO to assess and promote the integrity of the trademark register. The Trademark Act gives the Director of the USPTO discretion regarding the number of specimens to require. 15 U.S.C. 1051(a)(1), (d)(1), 1058(b)(1)(C), 1141k(b)(1)(C). The current rules mandate the submission of only one specimen per class in connection with a section 8 or section 71 affidavit unless additional information, exhibits, affidavits or declarations, or specimens

are necessary for proper examination of the affidavit itself. 37 CFR 2.161(g), (h), 7.37(g), (h). However, these rules do not currently allow the Office to require additional specimens or other information or exhibits in order to verify that the mark is in use on additional goods/services listed in the registration. The proposed rules will allow the USPTO to properly examine the nature and veracity of allegations of use made in connection with the submission of a section 8 or section 71 affidavit, and thereby assess and promote the integrity of the register by verifying that the register accurately reflects the goods/services for which use is claimed for a given registered mark.

3. Description and estimate of the number of affected small entities:

The USPTO does not collect or maintain statistics in trademark cases on small-versus large-entity registrants, and this information would be required in order to estimate the number of small entities that would be affected by the proposed rules. However, the USPTO believes that the overall impact of the proposed rules on registrants will be relatively minimal.

After registration, trademark owners must make periodic filings with the USPTO to maintain their registrations. A section 8 or section 71 affidavit is a sworn statement in which the registrant specifies the goods/services/collective membership organization for which the mark is in use in commerce and/or the goods/services/collective membership organization for which excusable nonuse is claimed. 15 U.S.C. 1058, 1141k. The purpose of the section 8 and section 71 affidavits is to facilitate the cancellation, by the Director of the USPTO, of registrations of marks no longer in use in connection with the goods/services/collective membership organization identified in the registrations. The proposed rules would apply to any entity filing a section 8 or section 71 affidavit, but

only a subset of trademark owners would be required to provide more than one specimen or additional information, exhibits, or specimens in connection with the audit. The USPTO is unable to estimate the subset of trademark owners who are small entities that are impacted by the proposed rules. In Fiscal Year 2015, approximately 147,496 section 8 and 5,000 section 71 affidavits were filed.

4. Description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record:

The proposed rules impose no new recordkeeping requirements on trademark registrants.

Regarding compliance with the proposed rules, as an initial matter, the USPTO does not anticipate the proposed rules to have a disproportionate impact upon any particular class of small or large entities. Any entity that has a registered trademark in which the mark is registered for more than one good or service per class could potentially be impacted by the proposed rules.

The USPTO anticipates that it may conduct random audits of up to 10% of the combined total of section 8 and section 71 affidavits filed each year in which the mark is registered for more than one good or service per class. In those post registration cases where an initial requirement for additional information, exhibits, affidavits or declarations, and specimens is issued in an Office action, and assuming that an attorney is representing the registrant, the USPTO estimates it will take approximately one hour to

comply. To that end, the USPTO provides an online electronic form for responding to Office actions.

Similar to the submission necessary for the statutorily required section 8 and section 71 affidavits, a response to an Office action issued in connection with these affidavits will generally necessitate gathering and submitting one or more specimens of use and an accompanying declaration. Therefore, under the proposed rules, the type of fact gathering and review of the nature and extent of the use of the mark that underlies a section 8 or section 71 affidavit will already have occurred. Compliance with the proposed requirement will only necessitate gathering and submitting the additional evidence to demonstrate and support what has previously been assessed.

Assuming the mark is in use, as claimed, the compliance time involves the length of time to secure additional information, exhibits, affidavits or declarations, or specimens and accompanying declaration, plus any time it takes an attorney to communicate with the client in order to obtain what is required and make the necessary filing with the USPTO. In practice, approximately one-third of section 8 and section 71 affidavits are filed pro se. These trademark owners are likely to have a shorter compliance time than the USPTO has estimated, which assumes the involvement of an attorney. The proposed rules do not mandate the use of legal counsel.

5. Description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities:

The USPTO has considered whether and how it is appropriate to reduce any burden on small businesses through increased flexibility. The following alternatives were considered, but rejected, by the USPTO.

USPTO considered an alternative where it would not require additional information, exhibits, affidavits or declarations, and specimens in connection with section 8 or section 71 affidavits, or where it would exempt small entities from such requirements. This alternative would have a lesser economic impact on small entities, but was rejected because it would not accomplish the stated objective of assessing and promoting the integrity of the trademark register by verifying that marks are in use for the goods/services identified in the registration. As noted above, the results of the post registration proof-of-use pilot supported the need for ongoing efforts aimed at assessing and promoting the accuracy and integrity of the register as to the actual use of marks in connection with the goods/services identified in the registrations. Subsequent outreach efforts revealed widespread support for continuing the pilot program on a permanent basis. Exempting small entities would prevent consideration of all section 8 and section 71 affidavits and not achieve the stated objective of assessing and promoting the accuracy and integrity of the register.

The stated objective of the proposed rules also facilitates the cancellation of registrations for marks that are no longer in use or that were never used, and for which acceptable claims of excusable nonuse were not submitted, in connection with the identified goods/services. The statutory requirements in sections 8 and 71 exist to enable the USPTO to clear the register of deadwood by cancelling, in whole or in part, registrations for marks that are not in use for all or some of the goods/services identified

in the registration. The proposed rules further this statutory purpose. Exempting small entities from possible scrutiny regarding use allegations would fail to address marks not used by them, thereby not achieving the objective.

USPTO considered a second alternative that would extend the time period for compliance by small entities, however this was rejected because there appears to be no reason that meeting the requirements of the proposed rules would be more time consuming for small entities. The USPTO's standard six-month time period for responding to Office actions allows sufficient time regardless of small-entity status.

Finally, USPTO considered an alternative that would streamline or simplify the compliance mechanism for small entities, but it was deemed unnecessary given the ease of responding electronically to Office actions using the Trademark Electronic Application System Response to Post Registration Office Action form. Thus, under the proposed rule, compliance will be as streamlined and simplified as possible for all affected entities. Moreover, where the objective is to verify the accuracy of a claim of use in a section 8 or section 71 affidavit, the proposed requirements for additional information, exhibits, affidavits or declarations, and specimens demonstrating the manner of use of the mark in connection with the specified goods/services are the least burdensome and most efficient means of achieving the objective of assessing and promoting and assessing the accuracy and integrity of the register by verifying allegations of use.

Use of performance rather than design standards is not applicable to the proposed rulemaking because the USPTO is not issuing any sort of standard. The proposed rules will require registrants to furnish evidence of use, rather than comply with a performance or design standard.

6. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule:

The proposed rules do not duplicate, overlap or conflict with any other Federal rules.

Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule changes; (2) tailored the rules to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing a notice of proposed rulemaking, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

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

Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a “major rule” as defined in 5 U.S.C. 804(2).

Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 et seq.

Paperwork Reduction Act: This rulemaking involve 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 rule has been reviewed and previously approved by OMB under control numbers control numbers 0651-0051 and 0651-0055.

You may send comments regarding the collections of information associated with this rule, including suggestions for reducing the burden, to (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW, Washington, DC 20503, Attention: Nicholas A. Fraser, the Desk Officer for the United States Patent and Trademark Office; and (2) The Commissioner for Trademarks, by mail to P.O. Box 1451, Alexandria, VA 22313-1451, attention Catherine Cain; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, VA 22314, attention Catherine Cain; or by electronic mail message via the Federal eRulemaking Portal. All comments submitted directly to the USPTO or provided on the Federal eRulemaking Portal should include the docket number (PTO-T-2016-0002).

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

37 CFR Part 2

Administrative practice and procedure, Trademarks.

37 CFR Part 7

Administrative practice and procedure, International Registration, Trademarks.

For the reasons stated in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the USPTO proposes to amend parts 2 and 7 of title 37 as follows:

PART 2 - RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1113, 15 U.S.C. 1123, 35 U.S.C. 2, Section 10 of Pub. L. 112–29, unless otherwise noted.

2. Amend § 2.161 by revising paragraph (h) to read as follows:

§ 2.161 Requirements for a complete affidavit or declaration of continued use or excusable nonuse.

* * * * *

(h) The Office may require the owner to furnish such information, exhibits, affidavits or declarations, and such additional specimens as may be reasonably necessary to the proper examination of the affidavit or declaration under section 8 of the Act or for the Office to assess and promote the accuracy and integrity of the register.

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**PART 7 – RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL
RELATING TO THE MADRID AGREEMENT CONCERNING THE
INTERNATIONAL REGISTRATION OF MARKS**

3. The authority citation for 37 CFR part 7 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

4. Amend § 7.37 by revising paragraph (h) to read as follows:

§ 7.37 Requirements for a complete affidavit or declaration of use in commerce or excusable nonuse.

* * * * *

(h) The Office may require the holder to furnish such information, exhibits, affidavits or declarations, and such additional specimens as may be reasonably necessary to the proper examination of the affidavit or declaration under section 71 of the Act or for the Office to assess and promote the accuracy and integrity of the register.

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Dated: June 16, 2016.

Michelle K. Lee
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
[FR Doc. 2016-14791 Filed: 6/21/2016 8:45 am; Publication Date: 6/22/2016]